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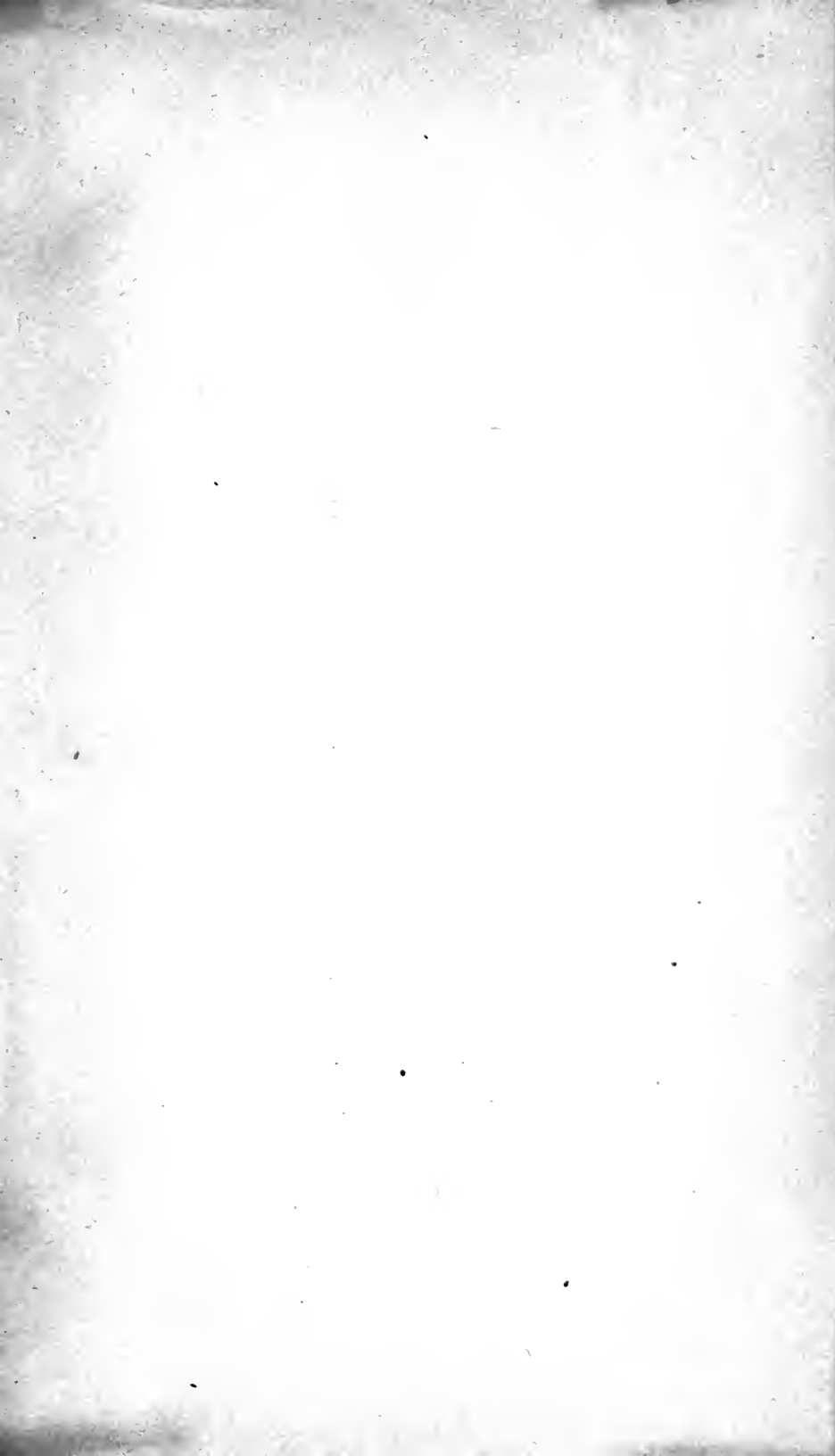
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# MANUAL OF CANAL LAWS

RELATING TO THE

## NEW YORK STATE CANALS;

WITH REFERENCES TO THE

DECISION OF THE COURTS, THE CANAL BOARD  
AND THE CANAL APPRAISERS, AND A CHRONOLOGICAL  
LIST OF ALL THE STATUTES OF THIS STATE, OF A PUBLIC NATURE,  
RELATING TO THE CANALS, FROM 1791 TO AUGUST, 1873.

TOGETHER WITH THE

### CANAL REGULATIONS,

RULES, FORMS, RATES OF TOLL, NAMES OF PLACES, TABLE  
OF DISTANCES, ETC., ETC., NOW IN FORCE,

AS ESTABLISHED BY THE

### CANAL BOARD.

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COMPILED BY

GEORGE W. CHAPMAN,

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COUNSELOR AT LAW.

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ALBANY:

WEED, PARSONS AND COMPANY, PRINTERS.

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WHICH RELATE TO THE CANALS OF THE STATE OF NEW YORK,  
ARRANGED UPON THE PLAN OF THE REVISED STATUTES.

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## THE REVISED STATUTES

Consist of four parts, which are denominated Acts.

### PART I.

Of the Revised Statutes, is entitled "An Act concerning the Territorial  
limits and Divisions, the Civil polity and the Internal Administration  
of this State," and consists of twenty chapters, which are sub-divided  
into Titles, Articles and Sections.

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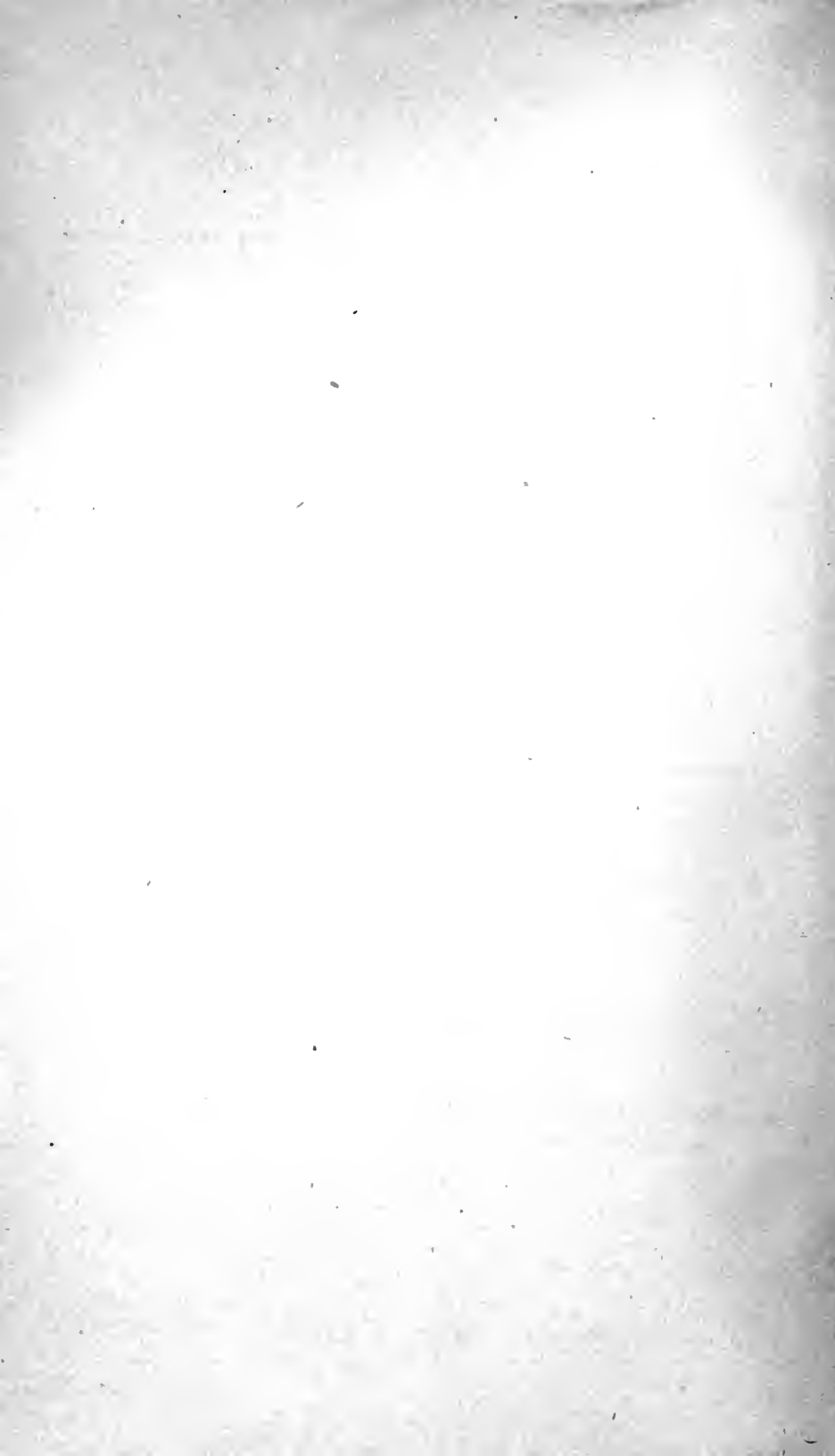
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# CHRONOLOGICAL LIST

OF

## STATUTES

OF THE

# STATE OF NEW YORK,

RELATING TO ITS CANALS,

From 1791 to August, 1873.

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THIS List is intended to be a full index to all the Statutes of a public nature which have been enacted in relation to the canals of this State, and of Concurrent Resolutions of the Legislature relating thereto.

It omits some general appropriation acts, which contain small items for canal expenses, and also all private claim bills for the relief of claimants and contractors (except a few of local interest or general importance, and those relating to the use and appropriation of waters for canal purposes).

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THE

CONSTITUTION OF THE STATE OF NEW YORK.

Adopted November 3, 1846.

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ARTICLE V.

- SECTION 1. State officers, how elected and terms of office.  
2. State engineer and surveyor, how chosen and term of office  
3. Canal commissioners, how chosen and terms of office.  
\* \* \* \* \*  
5. Commissioners of the land office; commissioners of the canal  
fund; canal board.  
6. Powers and duties of boards, etc.  
7. Treasurer may be suspended by governor.  
8. Certain offices abolished.

SECTION 1. The secretary of state, comptroller, treasurer and attorney-general shall be chosen at a general election, and shall hold their offices for two years. Each of the officers in this article named (except the speaker of the assembly) shall, at stated times, during his continuance in office, receive for his services a compensation, which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive, to his use, any fees or perquisites of office, or other compensation.

§ 2. A state engineer and surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer.

§ 3. Three canal commissioners shall be chosen at the general election which shall be held next after the adoption of this constitution, one of whom shall hold his office for one

year, one for two years, and one for three years. The commissioners of the canal fund shall meet at the capitol on the first Monday of January, next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two and which for three years ; and there shall be elected annually, thereafter, one canal commissioner, who shall hold his office for three years.

§ 5. The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be the commissioners of the land office. The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor and the canal commissioners.

§ 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

§ 7. The treasurer may be suspended from office by the governor during the recess of the legislature, and until thirty days after the commencement of the next session of the legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office during such suspension of the treasurer.

§ 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished, and no such office shall hereafter be created by law ; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

## ARTICLE VII.

- SECTION 1.** Canal debt, sinking fund, June 1, 1846, \$1,300,000 ; June 1, 1855, \$1,700,000.
2. General fund debt, sinking fund, \$350,000 ; after certain period, \$1,500,000.
  3. \$200,000 of the surplus canal revenues annually appropriated to general fund, and the remainder to specific public works ; certain deficiencies in the revenues, not exceeding \$250,000 annually, to be supplied from the revenues of the canals.
  4. Loans to incorporated companies not to be released or compromised.
  5. Legislature shall, by equitable taxes, increase the revenues of the sinking fund in certain cases.
  6. Canals of the state not to be leased or sold.
  7. Salt springs.
  8. Appropriation bills.
  9. State credit not to be loaned.
  10. Power to contract debts limited.
  11. Debts to repel invasion, etc., may be contracted.
  12. Limitation of the legislative power in the creation of debts.
  13. Manner of passing bills imposing a tax.
  14. Same subject.

**SECTION 1.** After paying the expenses of collection, superintendence and ordinary repairs, there shall be appropriated and set apart in each fiscal year, out of the revenues of the state canals, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of one million and three hundred thousand dollars, until the first day of June, one thousand eight hundred and fifty-five ; and from that time the sum of one million and seven hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall be wholly paid ; and the principal and income of the said sinking fund shall be sacredly applied to that purpose.

Canal  
debt.Sinking  
fund  
\$1,300,000.

\$1,700,000.

**§ 2.** After complying with the provisions of the first section of this article, there shall be appropriated and set apart out of the surplus revenues of the state canals, in each fiscal year, commencing on the first day of June, one thousand eight hundred and forty-six, the sum of three hundred and fifty thousand dollars, until the time when a sufficient sum shall

General  
fund debt.Sinking  
fund  
\$350,000.

\$1,500,000.

13 Barb.  
63; 1b. 188;  
3 Seld. 9.

have been appropriated and set apart, under the said first section, to pay the interest and extinguish the entire principal of the canal debt; and after that period, then the sum of one million and five hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt called the general fund debt, including the debt for loans of the state credit to railroad companies which have failed to pay the interest thereon, and also the contingent debt on state stocks loaned to incorporated companies which have hitherto paid the interest thereon, whenever and as far as any part thereof may become a charge on the treasury or general fund, until the same shall be wholly paid; and the principal and income of the said last-mentioned sinking fund shall be sacredly applied to the purpose aforesaid; and if the payment of any part of the moneys to the said sinking fund shall at any time be deferred, by reason of the priority recognized in the first section of this article, the sum so deferred, with quarterly interest thereon, at the then current rate, shall be paid to the last-mentioned sinking fund, as soon as it can be done consistently with the just rights of the creditors holding said canal debt.

Sinking  
fund to  
pay inter-  
est and  
extinguish  
principal  
in 18 years.

§ 3. (<sup>1</sup> *Substituted for section three of article seven of the original constitution by amendment of 1854.*) After paying the said expenses of collection, superintendence and repairs of the canals, and the sums appropriated by the first and

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<sup>1</sup> The following section stood in the original constitution as section three of article seven. Section three, as it now stands, was substituted by an amendment proposed by the legislature in 1853, referred to the legislature of 1854, agreed to by two-thirds of the members elected to each house of that legislature, submitted to the people, and approved and ratified at an election held on the 14th day of February, 1854:

"SECTION 3. After paying the said expenses of superintendence and repairs of the canals, and the sums appropriated by the first and second sections of this article, there shall be paid out of the surplus revenues of the canals, to the treasury of the state, on or before the thirtieth day of September, in each year, for the use and benefit of the general fund, such sum, not exceeding two hundred thousand dollars, as may be required to defray the necessary expenses of the state; and the remainder of the revenues of the said canals shall, in each fiscal year, be applied, in such manner as the legislature shall direct, to the completion of the Erie canal enlargement, and the Genesee and Black River canals, until the said canals shall be completed.

If, at any time after the period of eight years from the adoption of this constitution, the revenues of the state, unappropriated by this article, shall

second sections of this article, there shall be appropriated and set apart in each fiscal year, out of the surplus revenues of the canals, as a sinking fund, a sum sufficient to pay the interest as it falls due, and extinguish the principal within eighteen years, of any loan made under this section; and if the said sinking fund shall not be sufficient to redeem any part of the principal at the stipulated times of payment, or to pay any part of the interest of such loan, as stipulated, the means to satisfy any such deficiency shall be procured on the credit of the said sinking fund. After complying with the foregoing provisions, there shall be paid annually out of said revenues, into the treasury of the state, two hundred thousand dollars, to defray the necessary expenses of government. The remainder shall, in each fiscal year, be applied to meet appropriations for the enlargement and completion of the canals mentioned in this section, until the said canals shall be completed. In each fiscal year thereafter the remainder shall be disposed of in such manner as the legislature may direct, but shall at no time be anticipated or pledged for more than one year in advance. The legislature shall annually, during the next four years, appropriate to the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals and to the completion of the Black River and Genesee Valley canals, and for the enlargement of the locks of the Champlain canal, whenever from dilapidation or decay it shall be necessary to rebuild them, a sum not exceeding two millions two hundred and fifty thousand dollars. The remainder of the revenues of the canals, for the current fiscal year in which such appropriation is made, shall be applied to meet such appropriation; and if the same

\$200,000  
payable  
annually  
out of  
revenues  
into trea-  
sury.

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not be sufficient to defray the necessary expenses of the government, without continuing or laying a direct tax, the legislature may, at its discretion, supply the deficiency, in whole or in part, from the surplus revenues of the canals, after complying with the provisions of the first two sections of this article, for paying the interest and extinguishing the principal of the canal and general fund debt; but the sum thus appropriated from the surplus revenues of the canals shall not exceed annually three hundred and fifty thousand dollars, including the sum of two hundred thousand dollars, provided for by this section for the expenses of the government, until the general fund debt shall be extinguished, or until the Erie canal enlargement and Genesee Valley and Black River canals shall be completed, and after that debt shall be paid, or the said canals shall be completed, then the sum of six hundred and seventy-two thousand five hundred dollars, or so much thereof as shall be necessary, may be annually appropriated to defray the expenses of the government."

shall be deemed insufficient, the legislature shall at the same session provide for the deficiency by loan.

Legisla-  
ture to  
borrow  
\$1,500,000.

Provisions  
of sec. 12  
not to ap-  
ply to loan  
authorized  
by this  
section.

The legislature shall also borrow one million and five hundred thousand dollars to refund to the holders of the canal revenue certificates, issued under the provisions of chapter four hundred and eighty-five of the laws of the year one thousand eight hundred and fifty-one, the amount received into the treasury thereon. But no interest to accrue after July first, one thousand eight hundred and fifty-five, shall be paid on such certificates. The provisions of section twelve of this article, requiring every law for borrowing money to be submitted to the people, shall not apply to loans authorized by this section. No part of the revenues of the canals, or of the funds borrowed under this section, shall be paid or applied upon or in consequence of any alleged contract made under chapter four hundred and eighty-five of the laws of the year one thousand eight hundred and fifty-one, except to pay for work done or materials furnished prior to the first day of June, one thousand eight hundred and fifty-two. The rates of toll on persons and property transported on the canals shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board, with the concurrence of the legislature. All contracts for work or materials on any canal shall be made with the person who shall offer to do or provide the same at the lowest price, with adequate security for their performance.

Loans to  
incorpora-  
ted com-  
panies not  
to be re-  
leased or  
comprom-  
ised.

§ 4. The claims of the state against any incorporated company, to pay the interest and redeem the principal of the stock of the state loaned or advanced to such company, shall be fairly enforced, and not released or compromised; and the moneys arising from such claims shall be set apart and applied as part of the sinking fund, provided in the second section of this article. But the time limited for the fulfillment of any condition of any release or compromise heretofore made or provided for, may be extended by law.

Legisla-  
ture shall  
by equi-  
table taxes  
increase  
the reve-  
nues of the  
sinking  
funds in  
certain  
cases.

§ 5. If the sinking funds, or either of them, provided in this article, shall prove insufficient to enable the state, on the credit of such fund, to procure the means to satisfy the claims of the creditors of the state as they become payable, the legislature shall, by equitable taxes, so increase the revenues of the said fund, as to make them, respectively, sufficient perfectly

to preserve the public faith. Every contribution or advance to the canals, or their debt, from any source, other than their direct revenues, shall, with quarterly interest, at the rates then current, be repaid into the treasury, for the use of the state, out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt.

§ 6. The legislature shall not sell, lease, or otherwise dispose of any of the canals of the state; but they shall remain the property of the state and under its management forever.

State can-  
als, 5  
Lansing,  
397.

§ 7. The legislature shall never sell or dispose of the salt springs belonging to this state. The lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of law and under the direction of the commissioners of the land office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.

Salt  
springs.

#### TITLE 4

§ 8. No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such an appropriation act; and every such law, making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum apportioned, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Appropri-  
ation  
bills.

§ 9. The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation.

State  
credit not  
to be  
loaned.

§ 10. The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts, but such debts, direct and contingent, singly or in the aggregate, shall not, at any time, exceed one million of dollars; and the moneys arising from the loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

Powerto  
contract  
debts  
limited.

Debts to  
repel inva-  
sion, etc.,  
may be  
contract-  
ed.

§ 11. In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection or defend the state in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Limitation  
of the leg-  
islative  
power in  
the crea-  
tion of all  
debts.

§ 12. Except the debts specified in the tenth and eleventh sections of this article, no debt shall be hereafter contracted by or on behalf of this state, unless such debt shall be authorized by a law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?"

The legislature may, at any time, after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may, at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever.

No such law shall be submitted to be voted on within three months after its passage, or at any general election, when any



other law or any bill or any amendment to the constitution shall be submitted to be voted for or against.

§ 13. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 14. On the final passage, in either house of the legislature, of every act which imposes, continues or revives a tax, or creates a debt or charge; or makes, continues or revives any appropriation of public or trust money or property; or releases, discharges or commutes any claim or demand of the state, the question shall be taken by ayes and noes, which shall be duly entered on the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein. Manner of passing bills imposing a tax. 4 Seld. 317.

## ARTICLE X.

*	*	*	*	*	*	*	*	*	*
SECTION 2. Officers, how chosen or appointed.									
3. Duration of office.									
*	*	*	*	*	*	*	*	*	*
5. Vacancies in office, how filled.									
6. Political year.									
7. Removal from office.									
8. When office deemed vacant.									
*	*	*	*	*	*	*	*	*	*

SECTION 2. All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.

§ 3. When the duration of any office is not provided by this constitution, it may be declared by law, and, if not so

declared, such office shall be held during the pleasure of the authority making the appointment.

\* \* \* \* \*

§ 5. The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

§ 6. The political year and legislative term shall begin on the first day of January; and the legislature shall, every year, assemble on the first Tuesday in January, unless a different day be appointed by law.

§ 7. Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial) whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

§ 8. The legislature may declare the cases in which **any** office shall be deemed vacant, when **no** provision is made for that purpose in this constitution.

## ARTICLE XII.

### SECTION 1. Oath of office prescribed.

SECTION 1. Members of the legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

“I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the state of New York; and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.”

And no other oath, declaration or test, shall be required as a qualification for any office or public trust.

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CANAL LAWS

OF THE

STATE OF NEW YORK.

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COMPILED FROM THE CONSTITUTION OF EIGHTEEN HUNDRED AND FORTY-SIX, THE REVISED STATUTES ADOPTED IN EIGHTEEN HUNDRED AND TWENTY-SEVEN, AND THE SUBSEQUENT STATUTES OF THIS STATE UP TO AUGUST, EIGHTEEN HUNDRED AND SEVENTY-THREE, OF A GENERAL NATURE, AND NOW IN FORCE, RELATING TO ITS CANALS; ARRANGED AND CLASSIFIED UPON THE PLAN OF THE REVISED STATUTES.

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# REVISED STATUTES.

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## PART FIRST.

“AN ACT CONCERNING THE TERRITORIAL LIMITS  
AND DIVISIONS, THE CIVIL POLITY, AND THE  
INTERNAL ADMINISTRATION OF THIS STATE.”

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## CHAPTER V.

OF THE PUBLIC OFFICERS OF THIS STATE, OTHER THAN MILITIA  
AND TOWN OFFICERS; THEIR ELECTION OR APPOINTMENT;  
THEIR QUALIFICATIONS AND THE TENURE OF THEIR OFFICES.

## TITLE I.

OF THE NUMBER, LOCATION AND CLASSIFICATION OF THE PUBLIC  
OFFICERS OF THIS STATE.

SECTION 1. Names and number of the several civil officers.

SECTION 1. (*R. S.*, § 1, *as amended by Constitution, Art. V.*)  
There shall be elected or appointed, in the manner hereinafter  
declared or prescribed, the following civil officers, who shall be  
arranged in classes to be denominated legislative, judicial and  
administrative; but this classification shall not be construed  
as defining the legal powers of the officers that shall be  
assigned to either class:

Classifica-  
tion of  
civil offi-  
cers.

1.

Executive  
officers.

2. In the class of executive officers, a governor and lieutenant-governor, a secretary of state, a comptroller, a treasurer, an attorney-general [and a state engineer and surveyor].<sup>1</sup>

3. \* \* \* \* \*

4. In the class of administrative officers, three canal commissioners, \* \* \* three canal appraisers, and so many superintendents of canal repairs as the canal board shall, from time to time, appoint.

## TITLE III.

### OF EXECUTIVE OFFICERS.

SECTION 2. Governor and lieutenant-governor, when to be chosen, etc.

3. Secretary of state, and other state officers, term of office, etc.

Governor  
and lieutenant-  
governor.

SECTION 2. (*Const., Art. IV, § 1.*) The executive power shall be vested in a governor, who shall hold his office for two years; a lieutenant-governor shall be chosen at the same time and for the same term.

Secretary  
of state  
and other  
officers.

§ 3. (*Const., Art. V, § 1.*) The secretary of state, comptroller, treasurer and attorney-general shall be chosen at a general election, and shall hold their offices for two years.

## TITLE V.

### OF ADMINISTRATIVE OFFICERS.

SECTION 4. Who commissioners of land office.

5. Who commissioners of canal fund.

6. Three canal commissioners shall be chosen.

7. Canal board, of whom to consist.

8. Superintendents of repairs, how appointed and removed.

9. Collectors of canal tolls, how appointed and removed.

10. Auditor may remove collectors.

11. Three canal appraisers, how appointed; not to act when interested.

Commis-  
sioners of  
the land  
office.

SECTION 4. (*R. S., § 1, modified Const., Art. V, § 5.*) The lieutenant-governor, speaker of the assembly, secretary of

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<sup>1</sup> The Revised Statutes, as amended by constitution, art. 5. Words thus inserted in brackets [—] are amendments to the original text, authorized by the constitution or the statutes, referred to in the parentheses (—) in the beginning of each section.

state, comptroller, treasurer, attorney-general and state engineer and surveyor, shall be the commissioners of the land office.

§ 5. (*R. S.*, § 2, *modified Const.*, *Art. V*, § 5.) The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general shall be commissioners of the canal fund; but they cannot act, as a board, unless the comptroller shall be present.

Commissioners of the canal fund.

§ 6. (*Const.*, *Art. V*, § 3.) Three canal commissioners shall be chosen at the general election, which shall be held next after the adoption of this constitution \* \* \* and there shall be elected annually, thereafter, one canal commissioner, who shall hold his office for three years.

Canal commissioners.

§ 7. (*R. S.*, § 5, *modified Const.*, *Art. V*, § 5.) \* \* \* The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor and the canal commissioners.

Canal board.

§ 8. (*R. S.*, § 6, *amended 1854, ch. 332*, § 4.) Superintendents of canal repairs shall be appointed by the canal board. No superintendent of canal repairs shall be removed by any canal commissioner during the session of the canal board; but either of the canal commissioners, when a recess or adjournment of the canal board shall have been ordered, or shall exist for more than five days, may, during such recess or adjournment, remove any of the superintendents on the division of the canals of which he has charge, and fill the vacancy occasioned by such removal, to continue until the order of the canal board in the matter; and the commissioners making such removal shall, without delay, report the name of the person removed, and the name of the person appointed, to the canal department, with the reasons for making such removal. On receiving such report, the auditor shall immediately give notice to the members of the canal board of a meeting of such board to consider such report; and if the canal board shall re-appoint the superintendent so removed, he shall not be again removed by a canal commissioner.

Superintendents of repairs, how appointed, how removed by commissioner.

§ 9. (*R. S.*, § 7.) Collectors of canal tolls shall be appointed by the canal board, and shall hold their offices for one year, but may be removed at any time by such board.

Removal. § 10. (*R. S.*, § 8, *amended* 1848, *ch.* 162, § 2.) The [auditor]<sup>1</sup> shall also have power to remove any of the said collectors, at his pleasure, and to fill the vacancy occasioned by such removal, until the next meeting of the canal board.

Canal appraisers. § 11. (*R. S.*, § 9, *modified* 1836, *ch.* 287.) There shall be nominated by the governor and appointed by him, with the consent of the senate, three officers by the name of canal appraisers. \* \* \* No person shall act as appraiser in any case in which he shall be either directly or indirectly interested.

## TITLE VI.

GENERAL PROVISIONS APPLICABLE TO ALL THE CIVIL OFFICERS OF THIS STATE, OR TO CERTAIN CLASSES OF THEM.

ARTICLE 1. General provisions respecting the appointment of officers, their qualifications, the commencement and duration of their offices.

2. Of nominations to offices and commissions to offices.
3. Of the oath of office and official bond.
4. Of resignations, removals, vacancies, etc.
5. Proceedings to compel the delivery of books and papers of public officers to their successors.

## ARTICLE I.

GENERAL PROVISIONS RESPECTING THE APPOINTMENT OF OFFICERS, THEIR QUALIFICATIONS, THE COMMENCEMENT AND DURATION OF THEIR OFFICES.

SECTION 12. No person can hold an office unless twenty-one years of age and a citizen.

13. When officers to enter on their duties.
14. Assistants and deputies, how appointed.
15. Their number, how limited.
16. Their powers during a vacancy.
17. Duration of offices.
18. Certain officers to act until their successors qualify.

General disabilities.

SECTION 12. (*R. S.*, § 1.) No person shall be capable of holding a civil office who, at the time of his election or appointment,

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<sup>1</sup> Ch. 162, Laws of 1848, § 2, is as follows:

"§ 2. All the powers and duties of the chief clerk of the canal department, and all the powers and duties of the comptroller in relation to the canals, except his powers and duties as commissioner of the canal fund, are hereby transferred to and vested in the said auditor; and the said



shall not have attained the age of twenty-one years, and who shall not then be a citizen of this state.

§ 13. (*R. S.*, § 3.) All officers elected by the people, unless they shall be elected to supply vacancies then existing, shall enter on the duties of their respective offices on the first day of January following the election at which they shall be chosen.

Com-  
mence-  
ment of  
office.

§ 14. (*R. S.*, § 5.) All assistants, deputies, and other subordinate officers of every description, whose appointment is not or shall not be specially provided for, shall be appointed by the body, board or officer, to which, or to whom, they shall be respectively subordinate.

Deputies,  
etc., how  
appointed

§ 15. (*R. S.*, § 6.) When the number of such subordinate officers is not or shall not be directed by law, it shall be limited at the discretion of the appointing power.

Their  
number

§ 16. (*R. S.*, § 7.) In all cases not otherwise provided for, each deputy shall possess the powers, and perform the duties, attached by law to the office of his principal, during a vacancy in such office, and during the absence of his principal.

Their  
powers.

§ 17. (*R. S.*, § 8.) Every office of which the duration is not prescribed by the constitution, or is not or shall not be declared by law, shall be held during the pleasure of the authority making the appointment.

Duration  
of certain  
officer.

§ 18. (*R. S.*, § 9.) Every officer duly appointed, except the justices of the supreme court, who shall have duly entered on the duties of his office, shall continue to discharge the duties thereof, although his term of office shall have expired, until a successor in such office shall be duly qualified.

Officers to  
hold over  
24 Wend.  
215; 9  
Paige, 209  
21 Barb.  
500.

\* \* \* \* \*

auditor shall also be secretary of the commissioners of the canal fund, and of the canal board."

Under this section, it is necessary to insert the word "auditor," in place of "comptroller," in many of the existing statutes.

In this Manual, such change will be indicated by printing the word "[auditor]" in brackets, and in some cases the reference to the act of 1848 may be omitted.

## ARTICLE III.

## OF THE OATH OF OFFICE AND THE OFFICIAL BOND.

- SECTION 19. Persons elected or appointed to civil offices to take oath.  
 20. Time within which such oath is to be taken.  
 21. Before whom such oath may be taken.  
 22. Oaths when certified to be deposited with certain officers.  
 23. Deputies to take oaths.  
 24. Official bonds to be filed within the same time that oath is to be filed.  
 25. Notice to be given of neglect to file official bond or oath.  
 26. Duty of comptroller [or auditor] when bond is not filed in time.  
 27. Bond to be deemed in full force until successor is appointed and qualified.  
 28. Sureties exonerated after renewal of bond.  
 29. Penalty for acting without oath or bond.  
 30. Office of commissioners of public accounts abolished.

Oath of  
office.

SECTION 19. (*R. S.*, § 20.) Every person who shall be elected or appointed to any civil office or public trust embraced in this chapter, before he shall enter on the duties of such office or trust, shall take the following oath or affirmation:

“I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States, and the constitution of the state of New York; and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability.

When to  
be taken.

§ 20. (*R. S.*, § 21.) Whenever a different time shall not be prescribed by law, such oath of office shall be taken and subscribed, and deposited in the proper office, within fifteen days after the officer shall be notified of his election or appointment, or within fifteen days after the commencement of his term of office.

Before  
whom.

§ 21. (*R. S.*, § 22.) The oath may be taken and subscribed, except where otherwise provided, before any justice of the supreme court, the secretary of state, the attorney-general, the lieutenant-governor, the president of the senate for the time being, the speaker of the house of assembly, any judge of any county court, any mayor or recorder of any city, the clerk of any county or city, or of any court of record.

How de-  
posited.

§ 22. (*R. S.*, § 24, amended 1848, *ch.* 72, § 2, and modified by *Const. Art. XIV*, § 8.) Every such oath, duly certified by

the officer before whom the same was taken, shall be deposited within the time required by law, as follows:

1. The oath of the governor, lieutenant-governor, justices *do.* of the supreme court, comptroller, secretary of state, attorney-general, treasurer [state engineer and surveyor]; of the members of the senate and assembly, and of the clerks, sergeants-at-arms and door-keepers thereof; of the canal commissioners, and all other executive and administrative officers, whose authority is not limited to any particular district or county, except where otherwise directed, in the office of the secretary of state.

\* \* \* \* \*

5. The oaths of notaries public, superintendents of canal *do.* repairs, and collectors of canal tolls, in the office of the clerk of the county in which they reside.

6. The oaths of all judicial, executive and administrative *do.* officers appointed or elected for any county or city, and of all officers whose duties are local, or whose residence in any particular district or county is prescribed by law, in the office of the clerk of the county in which they reside.

§ 23. (*R. S.*, § 25.) Whenever any officer is authorized or required by law to appoint a deputy, such deputy shall take the same oath of office within fifteen days after his appointment, and shall cause the certificate thereof to be filed in the office where his principal is required to file his oath. *Deputy's oath.*

§ 24. (*R. S.*, § 26.) Whenever any officer is required by law to execute any official bond, he shall cause the same to be filed in the proper office within the time herein prescribed for filing his oath of office, unless otherwise provided by law. *Official bond.*

§ 25. (*R. S.*, § 27.) In case any officer who is required to file the certificate of his oath of office, or his official bond, with the secretary of state, or with any county clerk, shall neglect to do so within the time required by law, it shall be the duty of such secretary or clerk immediately to give notice of such neglect to the governor. \* \* \* *Notice of neglect.*

§ 26. (*R. S.*, § 28, and 1848, *ch.* 162, § 2.) Whenever any official bond is required by law to be filed with the comptroller [or auditor], and there shall be a neglect to file the same within the time prescribed, the comptroller [or auditor] shall immediately give notice thereof to the governor, in case the

officer was commissioned by him, and if not so commissioned, then to the board or body which appointed the officer so neglecting.

Liability  
on bond.

§ 27. (*R. S.*, § 29.) Every bond executed by any officer, pursuant to law, for the faithful discharge of the duties of his office, shall be deemed to be in force and obligatory upon the principal and sureties therein, so long as such officer shall continue to discharge the duties of his office, and his successor shall be appointed and duly qualified.

Liability  
when ter-  
minated.

§ 28. (*R. S.*, § 30.) But the sureties in any such bond shall be exonerated from all liability by reason thereof for all acts and omissions of their principal after he shall have duly renewed any official bond pursuant to law.

Penalty  
for acting  
without  
oath or  
bond.  
29 N. Y.  
Rep. 534.

§ 29. (*R. S.*, § 31.) If any person shall execute any of the duties or functions of any office, without having taken and subscribed the oath of office required by law, or without having executed and filed in the proper office any bond required by law, he shall forfeit the office to which he may have been elected or appointed, and shall be deemed guilty of a misdemeanor punishable by fine or imprisonment.

Commis-  
sioners of  
public ac-  
counts  
abolished.

§ 30. (1872, *ch.* 541, § 1.) \* \* \* The office of the commissioners of public accounts is hereby abolished, to take effect on the first day of October, 1872. \* \* \*<sup>1</sup>.

## ARTICLE IV.

### OF RESIGNATIONS, VACANCIES AND REMOVALS, AND MEANS OF SUPPLYING THEM.

SECTION 31. Resignations, to what officers to be made.

32. Resignations, where filed in cases not otherwise provided for.

33. Offices, when to become vacant.

34. Governor may remove certain officers appointed by him.

35. On judgment for breach of bond he may declare office vacant.

36. Governor may supply certain vacancies by temporary appointments.

37. Vacancies in office of canal commissioner to be filled by legislature when in session, by the governor at other times.

38. Vacancies in certain cases to be filled by election.

39. Caption of ballot.

40. Governor to fill certain offices when vacancies occur.

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<sup>1</sup> For legislation establishing the office of commissioners of public accounts, see Laws of 1857, ch. 592, and 1863, ch. 223.

SECTION 31. (*R. S.*, § 33.) Resignations shall be made as follows :

Resigna-  
tion to  
whom to  
be made.

1. By the governor, lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general [state engineer and surveyor], to the legislature.

2. By all officers appointed by the governor alone, or by him with the consent of the senate to the governor.

\* \* \* \* \*

8. By all other officers to the body, board or officer that appointed them.

§ 32. (1850, *ch.* 126.) In all cases not otherwise provided for by law, resignation of an office may be made by filing in the office of the secretary of state a written resignation thereof, signed by the incumbent; and thereupon the office so relinquished shall be deemed to be vacant.

do.  
Where  
filed in  
cases not  
provided.

§ 33. (*R. S.*, § 34.) Every office shall become vacant on the happening of either of the following events before the expiration of the term of such office :

When offi-  
ces be-  
come  
vacant.

1. The death of the incumbent.

2. His resignation.

3. His removal from office.

4. His ceasing to be an inhabitant of the state, or if the office be local, of the district, county, town or city for which he shall have been chosen or appointed, or within which the duties of his office are required to be discharged.

5. His conviction of an infamous crime, or of any offense involving a violation of his oath of office.<sup>1</sup>

6. His refusal or neglect to take the oath of office within the time required by law, or to give or renew any bond within the time prescribed by law.

7. The decision of a competent tribunal, declaring void his election or appointment.

§ 34. (*R. S.*, § 38.) All officers who are or shall be appointed by the governor for a certain time, or to supply a vacancy, may be removed by him.<sup>2</sup>

Governor's  
power of  
removal.

<sup>1</sup> For statutes relating to bribery, sale of offices, and for determination of charges against officers, see *Laws of 1853, ch. 539; 1863, ch. 51, and 1866, ch. 629.*

<sup>2</sup> See, also, 1867, ch. 335, *post*, § 40.

Effect of  
judgment  
on bond.

§ 35. (*R. S.*, § 40.) The governor may also declare vacant the office of every officer required by law to execute an official bond, whenever a judgment shall be obtained against such officer for a breach of the condition of such bond.

Tempo-  
rary ap-  
point-  
ments.

§ 36. (*R. S.*, § 42.) The governor may supply all vacancies that may happen during the recess of the senate, in any office to which an appointment shall have been made by the governor, with the consent of the senate [\* \* \*]<sup>1</sup>, by granting commissions, which shall expire at the end of twenty days from the commencement of the next meeting of the senate.

Canal  
commis-  
sioners.

§ 37. (1847, *ch.* 360, § 1.) Whenever, from any cause, the office of canal commissioner shall become or be vacant at or during a period when the legislature shall be in session, it shall be and is hereby made the duty of the legislature to appoint some proper person to fill such vacancy in the same manner as is now prescribed by law for filling vacancies in the office of regent of the university; and whenever, from any cause, the office of canal commissioner shall become or be vacant at a period when the legislature is not in session, it shall be and is hereby made the duty of the governor (or person acting as governor) to appoint some proper person to fill such vacancy, and to cause such appointment to be duly filed in the office of the secretary of state, and the person appointed to such office, in either of the modes herein provided for, shall be entitled to all the privileges and subject to all the duties and liabilities of such office, and shall hold this office by virtue of such appointment, until the commencement of the political year next succeeding the first annual election after the happening of the vacancy which he was appointed to fill, and no longer, if the unexpired term of the office which such appointment shall be made to fill shall continue so long.<sup>2</sup>

By the  
governor.  
When not  
in session.

Vacancies  
in certain  
cases to be  
filled by  
election.

§ 38. (*Same ch.*, § 2.) Whenever the office of canal commissioner shall become vacant, and the unexpired term of such office so becoming vacant shall extend beyond the commence-

<sup>1</sup> Certain exceptions relating to judicial officers are omitted from this section, such provisions having been modified by the constitution of 1846.

<sup>2</sup> See, also, § 6, *ch.* 280, Laws of 1844, which provided that any vacancy happening in this office during the session of the legislature should be supplied in the manner then established for the appointment of secretary of state, and also for appointment by the governor when the vacancy occurred during the recess.

ment of the political year next succeeding the first annual election after the happening of such vacancy, there shall be chosen at the annual election which shall be held next after the happening of such vacancy, in the same manner as other canal commissioners are elected, a canal commissioner to fill such vacancy, and the person so elected shall hold such office and discharge the duties thereof for the residue of such unexpired term, from and after the commencement of the political year next succeeding such election.

§ 39. (*Same ch.*, § 3.) Whenever any person is voted for to fill a vacancy in the office of canal commissioner, the person so voted for shall be designated under the caption for "canal commissioner," by the words "to fill vacancy."

Caption of  
ballot.

§ 40. (1867, *ch.* 335, § 1, *amending chaps.* 29 and 46 of 1849, *modified by amendment to Constitution*, 1869, *Art. VI*, § 2.) Whenever vacancies shall exist or shall occur in any of the offices of this state, where no provision is now made by law for filling the same, the governor shall appoint some suitable person, who may be eligible to the office so vacant or to become vacant, to execute the duties thereof until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which such officer could be by law elected; and the person so appointed to fill such vacancy shall possess all the rights and powers, and be subject to all the liabilities, duties and obligations of such officer, as they are now or may hereafter be prescribed by law; provided, however, that when a vacancy exists in the offices of secretary of state, comptroller, treasurer, attorney-general, state engineer and surveyor [<sup>1</sup>] or canal commissioner, or a resignation has been actually sent in and accepted, to take effect at a future day, while the legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such vacancy, actual or prospective; and any person appointed by the governor by and with the advice and consent of the senate, whether in case of vacancy or otherwise (except state prison inspectors), may be removed from such office by concurrent resolution of both houses of the legislature. On such removal both houses shall, by joint ballot, appoint a person to the office made vacant thereby.

When  
governor  
to fill  
vacancy.

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<sup>1</sup> The words "Clerk of court of appeals" omitted. His appointment is now provided for, by amendment to the constitution of 1869, art. 6, § 2.

## ARTICLE V.

PROCEEDINGS TO COMPEL THE DELIVERY OF BOOKS AND PAPERS BY PUBLIC OFFICERS TO THEIR SUCCESSORS.<sup>1</sup>

\* \* \* \* \*

<sup>1</sup> See 1st ed. Revised Statutes, vol. 1, p. 124; or 5th ed. Revised Statutes, vol. 1, p. 416.

## CHAPTER IX.

OF THE FUNDS, REVENUE, EXPENDITURES AND PROPERTY OF THE STATE; AND THE ADMINISTRATION THEREOF.

\* \* \* \* \*

TITLE II. Of the canal fund, and the administration thereof.

\* \* \* \* \*

V. Of the public lands, and the superintendence and disposition thereof.

\* \* \* \* \*

IX. Of the canals.

## TITLE II.

OF THE CANAL FUND, AND THE ADMINISTRATION THEREOF.

- SECTION 41. Designation and description of the canal fund.  
 42. Certain part of the canal fund pledged.  
 43. Statement of the canal debt.  
 44. Commissioners of canal fund, of whom to consist.  
 45. To superintend and manage the fund.  
 46. Their duties; auditor to report annually the state of the fund.  
 47. Surplus revenues, how to be applied.  
 48. Surplus revenues, how invested.  
 49. May invest in other stock in certain cases.  
 50. May regulate deposits of money belonging to canal fund.  
 51. Auditor to report deposits, interest, etc.

## LOANS.

52. May borrow money for deficiency in canal debt.  
 53. May borrow in case of unavailable funds.  
 54. May make regulations as to transfers of stock, returns, etc.  
 55. Canal stock certificates to be signed and sealed by auditor.  
 56. Auditor to prepare certificates of canal stock.  
 57. Certificates returned to be preserved.  
 58. Books to be delivered by cashier of Manhattan company.  
 59. Books to be preserved.



SECTION 60. Cashier to issue new certificates for those surrendered and canceled.

61. Cashier to write "stock surrendered" on said books, and deliver canceled certificates.
62. Provision for payment of fractional parts or re-issues.
63. Proposals for loans to be advertised for.
64. Commissioners to prescribe rules for transfer of stock.
65. Commissioners may borrow for canal purposes under constitution, Art. VII, § 10.
66. Commissioners to establish an office for transfers at a bank in New York.
67. Responsibility of such banks.
68. Stocks transferable only at such office.
69. Certificates of stock, how issued.
70. Issues and transfers, how regulated.
71. Powers of attorney to transfer stock.
72. Not revoked in certain cases.
73. Manner of verifying powers of attorney.
74. Lost certificates may be renewed.
75. New certificates to representatives of deceased foreign owners.
76. Certificates, when to be issued to executors of deceased foreign owners.
77. Commissioners may borrow \$2,250,000, at six per cent per annum, for enlargement.
78. \$2,250,000, from remainder of surplus revenues, appropriated for enlargement.
79. Commissioners to borrow \$1,500,000.
80. To pay revenue certificates issued under ch. 485 of 1851.
81. \$1,250,000 for interest; \$155,820.37 for sinking fund.
82. Premiums, how invested and applied.
83. Moneyed corporations may buy and sell stock.
84. \$2,250,000 may be borrowed to meet appropriations made by ch. 330 of 1854.
85. May borrow \$2,250,000 for work on canals.
86. May borrow \$2,250,000 for enlargement.
87. May borrow \$2,500,000 for floating debt.
88. Moneys, how applied.
89. Proceeds to pay debts.
90. Annual tax to pay principal and interest.
91. When the fourth section may be repealed.
92. This act shall be submitted to the people.

#### COSTS AND LEGAL PROCEEDINGS.

93. Canal fund commissioners may allow claims for costs, expenses, etc., against canal officers.
94. Examination of claims for costs, etc.
95. Commissioners may direct the attorney-general or employ counsel to defend the interest of the state.
96. Canal fund or canal commissioners may bring certiorari.
97. Proceedings.
98. Certiorari not to prevent appeal.
99. Actions in behalf of the people to have preference.
100. Appeals may be brought without security.

## OF THE CANAL FUND.

## SECTION 101. Appeals to have preference.

- 102. Injunctions must be applied for in the district where the board or duty is located.
- 103. Governor may appoint counsel in injunctions in certain cases.
- 104. Proceedings in civil suits in behalf of the people.

## CHARGES ON CANAL FUND.

- 105. Charges on the canal fund.
- 106. Deficiencies in revenues of lateral canals to be paid by Erie and Champlain.
- 107. Expenses of canal appraisers' office to be paid from the revenues.
- 108. May pay ex-canal appraisers for returns to appeals.

## CANAL DEPARTMENT.

- 109. The canal department constituted.

## OF THE AUDITOR — HIS POWERS AND DUTIES.

- 110. Office of, created; chief clerk abolished.
- 111. Powers and duties of auditor.
- 112. Seal of office.
- 113. Books and papers, where deposited.
- 114. Copies certified by auditor may be used in evidence.
- 115. May employ and pay clerks.
- 116. Statement of tolls, trade and tonnage.
- 117. State dues to be paid into state treasury.
- 118. Balances to be credited to state treasurer.
- 119. May order treasurer to transfer funds.
- 120. Canal fund moneys to be paid by the treasurer on the warrant of the auditor.
- 121. Auditor's warrant to specify chapter and date of law and item of appropriation.
- 122. Auditor to countersign treasurer's checks.
- 123. Accounts of receipts and payments to be kept by auditor.
- 124. Annual report of receipts and payments.
- 125. To be made to legislature hereafter.
- 126. May designate an acting auditor.
- 127. May designate deputy auditor.
- 128. May designate secretary of canal board.
- 129. Governor shall appoint auditor.
- 130. May suspend him for violation of duty.
- 131. Term of office and salary.
- 132. Compensation of clerks.
- 133. Department expenses to be paid from canal fund.
- 134. Pay of collectors, weighmasters, etc.
- 135. Penalties remitted and tolls refunded, how paid.
- 136. Auditor may remove collectors.
- 137. Payment of damages for land, etc., when to be made.
- 138. Money for damages, where the property is incumbered, to be deposited.
- 139. Certificate of title to be filed before payment of damages.
- 140. To refuse payment of drafts on estimates unless verified as provided by law.

**SECTION 141.** Payments to contractors, how made.

- 142. Measurement to accompany receipt.
- 143. To advance expenses of engineer department.
- 144. Engineers to file bond.
- 145. Engineers to render accounts quarterly.
- 146. Engineers' accounts to be certified by canal commissioners.
- 147. Advances to superintendents of repairs.
- 148. Superintendents to make detailed estimates.
- 149. Estimates to be certified by commissioner.
- 150. Purchases to be made for cash; auditor to prescribe rules and require proof of payment.
- 151. To settle with canal commissioner and report sums paid and names to the legislature.
- 152. Auditor to act in place of canal commissioner when latter disqualified.
- 153. Duties of auditor as to water on Syracuse level.
- 154. Attorney-general to prepare papers when requested.
- 155. Auditor to prepare and distribute blanks.

**INTEREST.**

- 156. Awards and certificates to bear interest after certain times specified.
- 157. Interest to cease after notice by auditor of funds provided.
- 158. Treasurer to pay interest on warrant of auditor.

**ACCOUNTS, PRINTING, ETC.**

- 159. Fiscal year defined.
- 160. Books and accounts to be adapted thereto.
- 161. Annual accounts to be closed September 30.
- 162. Reports to be in hands of printer by 10th of December.
- 163. Of the public printing.

**TAX FOR DEFICIENCIES.**

- 164. Counties may levy tax for  $3\frac{1}{2}$  mill tax of 1872.
- 165. Or may issue bonds.
- 166. Actions of supervisors legalized.
- 167. Bonds, how to be issued.
- 168. Taxes imposed under chapter 734 of 1872, legalized.
- 169. Loans for same purpose legalized.

**REPAIR CONTRACTS ABOLISHED.**

- 170. Repair contract system and the contracting board abolished (with note and statement of statutes relating thereto).

**OF THE CANAL FUND.**

**SECTION 41.** (*R. S.*, § 1.) The canal fund shall continue to consist of the following property : Canal fund.

1. Lands granted for the construction of the canals, by the state, by companies, or by individuals, and remaining unsold.

2. Debts due for such portions of said lands as have heretofore been sold.

3. The tolls and commutation moneys, imposed on and collected from such navigable communications belonging to the state, as now are or hereafter shall be made and completed.

4. [6.] All moneys received for the sale or use of the surplus waters of any canal belonging to this state; and,

5. [7.] All moneys recovered in suits for penalties or damages instituted under the canal laws.<sup>1</sup>

Certain  
fund  
pledged.

§ 42. (*R. S.*, § 2, and *Const.*, *Art. VII*, § 3.) Such parts of the said fund as are designated in the tenth section of the seventh article of the constitution of this state [*Constitution of 1822*], are to be and remain inviolably appropriated and applied to the completion of the navigable communications specified in that section, and to the payment of the interest and the re-imbursement of the capital of the money borrowed to make and complete the same.<sup>2</sup> The rates of toll on persons and property transported on the canals, shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board with the concurrence of the legislature.

Canal  
debt.

§ 43. (1850, *ch.* 375, § 2.) The canal debt as it existed on the first day of June, 1846, is hereby declared to include all canal debts which existed prior to that day, arising on contracts or for land appropriated and used previous to said first day of June, 1846, which debts shall be ascertained and awarded in the manner required by law; and such debts, when thus ascertained and awarded, shall be paid from the canal debt sinking fund in the same manner as other portions of the canal debt.

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<sup>1</sup> The original subdivisions 4 and 5 were abrogated by the amendments to the constitution adopted in 1835 (relating to duties on salt and sales at auction). The Revised Statutes, §§ 1 and 2 embodied the provisions of article 7, § 10, of the constitution of 1822.

<sup>2</sup> The latter clause of the original § 2 is omitted, and the provision of § 3, art. 7, *Const.*, 1846, relating to tolls is added. The clause omitted was as follows:

"And rates of toll not less than those agreed to by the canal commissioners, and set forth in their report to the legislature of the twelfth of March, one thousand eight hundred and twenty-one, are to be imposed on and collected from all parts of such navigable communications."

Chapter 485 of 1851, § 11, authorized the canal board to adjust the rates of toll in such a manner as to produce the greatest amount of trade and revenue, but this act was repealed by *ch.* 338, *Laws of 1854*.

So far as any of the provisions of the original section (*R. S.*, § 2) are in force, they now relate wholly to tolls, the other sources of revenue having been diverted or abolished.

§ 44. (*Const., Art. V, § 5.*) \* \* \* The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general, shall be commissioners of the canal fund. Commissioners of canal fund.

§ 45. (*R. S., § 4.*) The canal fund shall continue to be superintended and managed by the commissioners of the canal fund, a majority of whom, including the comptroller, shall be a quorum for the transaction of business; but the care and disposition of all lands belonging to the canal fund, shall be vested in the commissioners of the land office. Superintendents of the fund.

§ 46. (*R. S., § 5, amended 1861, ch. 177, § 7.*) It shall be the duty of the commissioners of the canal fund, to manage, to the best advantage, all things belonging to that fund; to recommend from time to time to the legislature, the adoption of such measures as may be thought proper by them for the improvement of the fund; and [the auditor shall] report to the legislature at the opening of every session thereof, the state of the fund. Their duties.

§ 47. (*R. S., § 7.*) The commissioners of the canal fund shall, from time to time, apply the surplus revenues of the canal fund, after paying the interest of the canal debt, to the purchase of canal stock of this state, if in their opinion such stock can be purchased on advantageous terms. And the certificates of stock so purchased shall be canceled. Application of surplus revenue.

§ 48. (*1839, ch. 325, § 5.*) The commissioners of the canal fund are hereby authorized from time to time, to invest any surplus revenues of that fund in any stocks for the payment of which the faith of this state is or shall be pledged, and any such investments heretofore made are hereby confirmed. Surplus canal revenue.

§ 49. (*R. S., § 8.*) Whenever the commissioners shall be unable to purchase canal stock upon terms by them deemed advantageous to the state, they may invest such surplus revenues in the public stocks of the United States, or any public stock created by the corporation of the city of New York or Albany, and, from time to time, may re-invest the interest or dividends upon such investments, as part of such surplus revenues. Application of.

§ 50. (*1831, ch. 286, § 1; amended 1852, ch. 370.*) The commissioners of the canal fund may deposit the moneys be- Commissioners to deposit moneys.

longing to the said fund, with any safe incorporated moneyed institutions [or banking associations in this state], and may make such contracts with such institutions, for the interest on and duration of such deposits, as shall be most promotive of the interests of said fund.<sup>1</sup>

Auditor to  
report  
place of  
deposits.

§ 51. (Same *ch.*, § 2; *amended* 1861, *ch.* 177, § 7.) [The auditor] shall, in [his] annual report to the legislature, specify the institutions holding all such deposits, the amount of each, and the rate of interest paid thereupon.

•  
LOANS.

Money  
may be  
borrowed  
for defici-  
ency to  
pay inter-  
est and  
principal  
of canal  
debt.

§ 52. (1848, *ch.* 216, § 2; *amended* 1855, *ch.* 335, § 3.) If the sinking funds, or any of them, provided in article seven of the constitution, shall at any time be insufficient to pay the interest and redeem the principal of any part of the state debt (chargeable upon the revenues of the canals, by article seven of the constitution), as the same shall become due and payable, the commissioners of the canal fund shall be authorized, under the provisions of said article seven, to borrow on the credit of such funds or fund, payable in such time, not exceeding eighteen years, and bearing such rate of interest, not exceeding seven per cent per annum, as they may deem most beneficial to the interest of the state, to supply such deficiency; and the comptroller shall be authorized to issue stock therefor, in the manner provided by law for the issue of stock in other cases.

Provision  
in case of  
unavail-  
able  
funds.

§ 53. (1848, *ch.* 215; *amended* 1849, *ch.* 230.) If any of the stocks or unavailable funds that have been appropriated toward the completion or improvement of any of the canals, shall be unavailable to meet the contracts now made, or that may hereafter be made upon the faith of such appropriations, it shall be lawful for the commissioners of the canal fund to borrow upon the credit of such stocks and unavailable funds, at a rate of interest not exceeding seven per cent per annum, an amount not exceeding the nominal amount thereof, to be repaid from the avails of such stocks or unavailable funds, and pledging the faith of the state to make good any deficiency

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<sup>1</sup> Ch. 370, 1852, amends § 16, ch. IX, title 2, part 1, Revised Statutes, by inserting the words "or banking associations," immediately after the words "safe incorporated moneyed institutions." There is no § 16 in the Revised Statutes, 1st ed. The law of 1831 appears as § 11, in the 2d ed., as § 16 in the 3d ed., and as § 41 in the 5th ed.

remaining thereon ; and the comptroller is hereby authorized to issue stock therefor, in the same manner as is provided by law for the issue of stock in other cases.

§ 54. (1830, *ch.* 242, § 3.) The commissioners of the canal fund shall, from time to time, prescribe such rules and regulations, to be in accordance with the existing statutory provisions, relative to the transfer of all or any of the public stocks of this state, and the division and consolidation of the certificates thereof, as they shall think advisable and proper, and may alter and modify the same. The said commissioners may also require such returns to be made to the [auditor], by the officer or person authorized by law to transfer said stocks, and pay the interest on any loan, as they may deem reasonable and expedient.

§ 55. (1857, *ch.* 783, § 4.) All certificates of stock hereafter issued by or under the direction of the commissioners of the canal fund, and purporting to be issued from the canal department, shall be signed by the auditor of the canal department instead of the comptroller, and be sealed with the seal of the canal department, instead of the seal of the comptroller.

Certificate  
of stock to  
be signed  
by auditor.

§ 56. (1831, *ch.* 320, § 2; *modified by* 1848, *ch.* 162, and 1857, *ch.* 783, § 4.) It shall be the duty of the comptroller, [or auditor, in case of all canal loans made since April 17, 1857], from time to time, to prepare and deliver to the cashier of the Manhattan Company, or such other officer as shall at any time be designated or authorized to issue certificates of stock created or to be created under the laws of this state, suitable books, containing certificates of stock, of the form and description, as near as may be, as are now used ; which said certificate shall be filled up in the handwriting of said comptroller [or auditor,] or such one of the clerks in his office as he shall from time to time designate, of the following denominations: one dollar, fifty dollars, one hundred dollars, three hundred dollars, five hundred dollars, one thousand dollars, three thousand dollars, five thousand dollars, ten thousand dollars, and twenty thousand dollars ; and said certificates shall be numbered and signed by the comptroller, [or auditor] with the addition of his name of office. Said books shall also be prepared with broad and proper margins, in which shall be written out, at length, the denominations or amounts of said certificates, with the corre-

Comptrol-  
ler or  
auditor to  
prepare  
certificates  
of stock.

sponding numbers, and shall be signed by the comptroller [or auditor].

Certificates returned to be preserved.

§ 57. (*Same ch.*, § 3.) It shall be the duty of the cashier of the Manhattan Company, or such other officer as shall be authorized or designated to issue certificates of stock, to preserve all certificates returned to him; and whenever he shall issue certificates of stock, after he shall be furnished with the books in the last section mentioned, he shall take them from said books, and sign and date the same; and he shall write in the margin of the date when, and the person to whom, any certificate shall have been issued.

Books to be delivered.

§ 58. (*Same ch.*, § 4.) On the fourth Monday of September in each year, it shall be the duty of the comptroller [or auditor] to receive from the said cashier, or other officer as aforesaid, all such books, the certificates from which shall have been cut, and to receive and compare therewith the certificates of stock returned; and if the amounts correspond, after the necessary allowance for any new stock authorized to be issued by this state, to furnish said cashier or other officer with the proper voucher thereof.

And to be preserved by him.

§ 59. (*Same ch.*, § 5.) It shall be the duty of the comptroller [or auditor] to preserve the books and certificates returned (after seeing that said certificates are canceled) in some proper and safe place of deposit.

To give notice of new certificates to be issued.

§ 60. (*Same ch.*, § 6.) It shall be the duty of the comptroller [or auditor] to give notice, in two of the public newspapers printed in the city of New York, and in such other papers as he shall deem proper, and to renew the same from time to time, that new certificates of stock will be issued, of the form pointed out in the second section of this act, and to request the holders of certificates of stock to surrender and cancel their old and receive such new certificates.

Stock surrendered.

§ 61. (*Same ch.*, § 7.) It shall be the duty of said cashier, or such officer as shall be designated in his place as aforesaid, whenever any certificate of stock shall be surrendered and canceled as aforesaid, to issue new certificates from the aforesaid books, and to write in the margin thereof, "stock surrendered;" and the certificates so canceled shall be preserved and delivered to the comptroller [or auditor.]



§ 62. (*Same ch.*, § 8.) In case any one of the denominations of certificates does not correspond with the stock transferred or canceled as aforesaid, certificates of different denominations may be issued to meet the amount; and in case the holders of stock prefer selling the fractional parts of their stock, less than \$100, to receive certificates therefor, the said cashier, or other officer appointed in his place, is directed to purchase any said fractional parts; and the comptroller [or auditor] is directed to pay over to said cashier, or other officer designated in his place, the necessary moneys to meet advances under this section, and charge the same to the funds of the Erie and Champlain canals.

Certificates for fractional part.

§ 63. (*R. S.*, § 9.) Whenever the commissioners of the canal fund shall be authorized to borrow money upon the credit of the state, they shall, previous to any loan to be made by them, give notice that sealed proposals will be received to a given day, and until a certain hour of such day, to be named in the notice; which notice shall be published in two newspapers in each of the cities of New York and Albany, and continued for two weeks daily in the New York papers, and at least twice a week in the Albany papers. And the proposals received by them shall not be opened until the hour specified in such notice.

Shall advertise for proposals.

§ 64. (1849, *ch.* 228.) If the legislature, the canal board, commissioners of the canal fund, or canal commissioners, shall at any time, by virtue of constitutional and legal authority vested in them, authorize or require the payment of any sum of money out of the canal fund, for any purpose connected with the canal expenditures, to which the revenues of the canals are not applicable under the restrictions of the constitution, the commissioners of the canal fund shall be authorized, under the tenth section of the seventh article of the constitution, to borrow such sum of money payable in such time, not exceeding eighteen years, and bearing such rate of interest, not exceeding seven per cent per annum, as they may deem most beneficial to the interests of the state; and the comptroller shall be authorized to issue stock therefor, in the manner provided by law for the issue of stock in other cases.

General authority to borrow money.

§ 65. (1832, *ch.* 296, § 2.) When there shall not be money in the treasury belonging either to the general fund, the litera-

May redeem stock in

certain  
cases.

ture fund, or the common-school fund, and money shall be needed for the purposes of the government, the comptroller shall give notice thereof to the commissioners of the canal fund, and they shall redeem with money belonging to the Erie and Champlain canals, the Erie and Champlain canal stock, held by and belonging to the literature and common-school fund; and when all such stock shall be redeemed, the said commissioners shall purchase at par the stock of the Cayuga and Seneca, of the Oswego, and of the Hudson and Delaware canals, held by and belonging to either the literature or common-school funds in the order here mentioned, and in such portions and parcels as the wants of the general fund shall require; and the stock so purchased shall be assigned to and held by the commissioners of the canal fund for the Erie and Champlain canals.<sup>1</sup>

Offices for  
issue and  
transfer of  
stock to be  
established  
in New  
York.

§ 66. (1840, *ch.* 288, § 1.) The commissioners of the canal fund are hereby authorized to contract, in behalf of the people of this State, with any bank in the city of New York, to establish an office in such bank for the issue and transfer of certificates of any stock authorized by the laws of this state, for any loans made in its behalf by the comptroller or the said commissioners, and to allow such compensation as shall be reasonable for conducting the said business. The said commissioners may change or terminate any such contract and make other like contract with any bank in the city of New York.

Responsi-  
bility of  
such bank.

§ 67. (*Same ch.*, § 2.) The bank with which any such contract shall be made shall be responsible to the people of this state for the faithful and safe conducting the business of the said office, for the fidelity and integrity of the officers and loss or damage which may result from any omission to discharge their duties, and for any improper or incorrect discharge of those duties.

Transfers  
of stocks.

§ 68. (*Same ch.*, § 3.) All certificates of stock heretofore or hereafter issued under the authority of this state for any loan made in its behalf, by the comptroller or the said commissioners, shall be transferable only at the office so established,

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<sup>1</sup> This section does not appear in any of the later editions of the Revised Statutes. It may be modified or repealed by the provisions of the constitution of 1846, relating to the funds of the state.

according to the regulations which shall be prescribed by the said commissioners, which regulations shall be obligatory on all persons having any interest in such certificates.

§ 69. (*Same ch.*, § 4.) Certificates of stock which shall be hereafter issued for any loan authorized in behalf of the people of this state, shall be prepared, numbered, signed and issued in the manner provided by chapter three hundred and twenty of the laws of eighteen hundred and thirty-one; except that the same may be in any sums not less than \$100, as the commissioners of the canal fund may direct; but, in addition to the signature of the comptroller [or auditor], he shall cause such certificate to be sealed with his seal of office, and the same shall be countersigned by the president or cashier of the bank in which such transfer office shall be established, who shall also countersign the memorandum in the margin of the book from which any certificate shall be cut.

Certificates of stock, how issued.

§ 70. (*Same ch.*, § 5.) The commissioners of the canal fund may prescribe such further and other regulations as they may deem necessary to guard against the issue or transfer of any stock without authority, and for the keeping and rendering the accounts of the transaction of the transfer office, and for requiring vouchers of all transfers made; and upon the rendering of such accounts and vouchers, to furnish the bank with which such contract shall be made proper evidence thereof; and they, or any one of them, or any person deputed by them for that purpose, may, during the usual hours of business, inspect the books, papers and accounts in the said office.

Regulations of issues and transfers.

§ 71. (*Same ch.*, § 6.) Any person, firm or company, or any number of persons, firms, or companies, holding or intending to hold and own any certificate of stock heretofore or hereafter issued under the authority of this state, may, by an instrument in writing signed by them and duly acknowledged or proved, in the manner required by law to entitle any conveyance of land to be recorded, designate and depute the person or persons who shall execute powers of attorney, authorizing the transfer of any such certificates of stocks, then or thereafter to be held and owned by such person or persons, firm or firms; and may, in like manner, modify or revoke such instrument; and all transfers of such certificates of stock made pursuant to powers of attorney, executed by the person

Persons may be designated to authorize transfer of stock.

so designated, shall be valid and effectual to pass the interest of all the parties who executed such instrument, in any certificates of stocks of which the said parties shall be or shall thereafter become the legal owners, until such instrument of modification or revocation, duly acknowledged or proved in manner aforesaid, shall be served at the transfer office, established under this act.

Designation not revoked by death or withdrawal of one of a firm.

§ 72. (*Same ch.*, § 7.) If any such certificate of stock shall be held by any firm or company in hypothecation, pledge or deposit, or in trust for the benefit of others, and the purpose of holding the same shall be expressed in the instrument designating persons to authorize the transfer of the said certificates, such instrument shall not be deemed revoked by the death or withdrawal from such firm of any member thereof, so long as such firm or company shall continue to exist.

Regulations of issues and transfers.

§ 73. (*Same ch.*, § 8.) Powers of attorney to transfer any certificates of stock, acknowledged or proved before any officer authorized to take the proof of conveyances of land in this state, in the manner required to entitle such conveyance to be recorded, or acknowledged by a resident of any foreign country before a public notary of such country, by the party holding such certificate, or his agent, empowered or designated for that purpose, shall authorize the transfer of such stocks, subject to the regulations that may be prescribed as hereinbefore provided.

Certificates lost, may be renewed.

§ 74. (*Same ch.*, § 9.) When it shall satisfactorily appear on due proof to the commissioners of the canal fund that any certificate of stock issued for any loan made in behalf of this state, has been lost or casually destroyed, they may authorize the issuing to the lawful owner of such stock a new certificate corresponding in date, numbers and amount with the certificate so lost or destroyed, but expressing on its face that the same is a renewed certificate; but no such renewed certificate shall be issued until good security be given to satisfy the lawful claim of any person or persons to the said original certificate, or to any interest therein. The proofs on which such renewed certificates are issued shall be filed with the clerk of the said commissioners, and they shall report annually to the legislature the number and amount of the renewed certificates so issued.<sup>1</sup>

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<sup>1</sup> 1857, ch. 721, makes a similar provision for the issue of new certificates by the comptroller of stocks or bonds issued by him on account of the gen-

§ 75. (*Same ch.*, § 10.) In case of the death of any person in any other state or foreign country, who at the time of such death was the lawful owner of any certificate of stock issued for any loan made in behalf of this state, if it shall appear by the decision of any tribunal of competent jurisdiction in the country of which such person was a resident at the time of his death, that such certificate has been devised to any person or persons, or that any relative of such deceased person has, by the law of such country, succeeded to his right and interest in such certificate, the commissioners of the canal fund may, in their discretion, authorize the issuing of new certificates of stock to the person or persons so entitled, on the delivery to them of the original certificates, and on security being given, if they shall require the same, to satisfy the lawful claim of any person or persons to the said original certificate or any interest therein. The death of the grantor of any power of attorney in any other state or country shall not be deemed a revocation of such power as against any *bona fide* assignee of such stock until actual notice of such death.

To whom  
certificates  
to be  
issued in  
case of  
death of  
foreign  
owner.

Powers of  
attorney  
not re-  
voked by  
death un-  
til notice.

§ 76. (*Same ch.*, § 11.) Where letters testamentary shall have been granted on the personal estate of any person who, at the time of his death was a resident of any other State or foreign country, and was the lawful owner of any such certificate of stock, by the competent tribunal of the country in which such person died, or where judicial evidence of the appointment by any such person of an executor of his personal estate, or of the appointment of any person having, by the laws of such country, the right to take possession of such personal estate shall be given to the commissioners of the canal fund, they may authorize the issuing of new certificates of stock to such executor or person in place of such original certificate upon the surrender to them of such original certificate; and on such security being given to them as they may require to satisfy the lawful claim of any other person or persons to the said original certificate, or to any interest therein.

Certifi-  
cates when  
to be issued  
to execu-  
tors, etc.

§ 77. (1854, *ch.* 329, § 1.) The commissioners of the canal fund shall borrow, on the credit of this state, in such amounts,

Act of  
April 15,  
1854.

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eral fund, state debt, or temporary loan to the treasury, that have been lost or casually destroyed. 1857, *ch.* 783, directs that the auditor shall sign all certificates of canal stocks, instead of the comptroller. *Ante*, § 55.

\$2,250,000  
loan for  
enlarge-  
ment.

from time to time, as shall be required to pay the expenses that may be incurred under the provisions of this act, a sum not exceeding, in the whole, two millions two hundred and fifty thousand dollars, payable at such time or times as they may prescribe within eighteen years from the time of such loan, at a rate of interest not exceeding six per cent per annum, payable quarterly, on such days and at such places as the said commissioners shall direct. All the existing provisions of law in relation to loans of money for this state by the commissioners of the canal fund, and in relation to certificates of stock issued under the direction of the said commissioners, shall apply to the loan hereby authorized and to the certificates therefor issued by the said commissioners.

\$2,250,000  
appropri-  
ated  
for en-  
largement.

§ 78. (*Same ch.*, § 2.) The sum of two millions two hundred and fifty thousand dollars is hereby appropriated, payable out of the remainder of the surplus revenues of the canals, if there be any, that shall accrue during the present fiscal year after paying the expenses of collection, superintendence and repairs of canals, and the sums directed to be appropriated by the first and second sections of the seventh article of the constitution, and the sums hereinafter appropriated to pay the interest and to constitute a sinking fund to extinguish the principal of the loans made under this act, and the sum of two hundred thousand dollars to defray the necessary expenses of government, and out of the moneys to be borrowed, pursuant to the first section of this act, to be applied to the enlargement of the Erie, the Oswego, and the Cayuga and Seneca canals, and in the completion (upon the dimensions heretofore adopted) of the Genesee Valley and Black River canals, and for the enlargement of such of the locks of the Champlain canal to the size of the present locks of the enlarged Erie canal as the canal board shall determine to be so dilapidated or decayed as to render it necessary to rebuild them during the current year.

\$1,500,000  
loan.

§ 79. (*Same ch.*, § 3.) The said commissioners of the canal fund shall also borrow, on the credit of this state, the sum of one million and five hundred thousand dollars, payable at any time they may prescribe within eighteen years from the time of such loan, at a rate of interest not exceeding six per cent per annum, payable quarterly, on such days and at such places as the said commissioners shall direct. All the existing pro-

visions of law in relation to loans of money for the state by the commissioners of the canal fund, and in relation to certificates of stock issued under the direction of the said commissioners, shall apply to the loan hereby authorized and to the certificates therefor issued by the said commissioners.

§ 80. (*Same ch.*, § 4.) The money borrowed under the last preceding section of this act is hereby appropriated to refund to the holders of the canal revenue certificates, issued under the provisions of chapter four hundred and eighty-five of the laws of the year eighteen hundred and fifty-one, the amount received into the treasury thereon; but no interest to accrue after the first day of July, eighteen hundred and fifty-five, shall be paid on such certificates. \$1,500,000 appropriated to refund to holders of canal revenue certificates.

§ 81. (*Same ch.*, § 5.) After paying the expenses of collection, superintendence and repairs of the canals, and the sums directed to be appropriated by the first and second sections of article seventh of the constitution, there is hereby appropriated, to be paid out of the surplus revenues of the canals which shall accrue during the present fiscal year, the sum of one hundred and twelve thousand five hundred dollars, or so much thereof as shall be necessary to pay the interest of the current year on the debt that shall be contracted pursuant to the provisions of this act, and the sum of one hundred and fifty-five thousand eight hundred and twenty dollars and thirty-seven cents, to constitute a sinking fund to extinguish the principal of the said debt, which last-mentioned sum, and the interest thereon as received, shall be invested by the commissioners of the canal fund in the manner provided by law in respect to the investment of the surplus revenues of the canal fund. Appropriation for interest. For sinking fund.

§ 82. (*Same ch.*, § 6.) The premium received on any loans made by the commissioners of the canal fund for the completion of the canals, pursuant to the recent amendment of the constitution provided therefor, shall be invested, and the interest on such investments shall also be invested, by the commissioners of the canal fund, in the manner now provided by law in respect to the surplus revenue of the canal fund, and shall be applied at the expiration of four years from the passage of this act to the completion of the canals of this state, in case the appropriations authorized by the said amendment should be insufficient for that purpose. Premiums on loans.

Moneyed corporations and bankers may loan to state.

§ 83. (*Same ch.*, § 13.) Any moneyed corporation, and any association formed under the "act to authorize the business of banking," and any individual banker, may loan to the state any of the moneys herein authorized to be borrowed, and may purchase, hold and dispose of any certificates of the stock issued by the commissioners of the canal fund for any part of such loan; and the sum so loaned, and the stock so purchased, shall not, in respect to any limitation imposed by law, be deemed a violation thereof.<sup>1</sup>

Act of February 19, 1855.

May borrow amounts necessary to carry out chap. 330, of 1854.

Not to exceed \$2,250,000.

§ 84. (1855, *ch.* 23, § 1.) The commissioners of the canal fund shall borrow, on the credit of this state, in such amounts, from time to time, as may be deemed necessary to pay the appropriations made by chapter three hundred and thirty of the laws of eighteen hundred and fifty-four, for the enlargement of the Erie, the Oswego, the Cayuga and Seneca canals, and to the completion of the Black River and Genesee Valley canals, and for the enlargement of such of the locks of the Champlain canal to the size of the present locks of the enlarged Erie canal, as the canal board shall determine to be necessary to rebuild from dilapidation or decay, a sum not exceeding in the whole two million two hundred and fifty thousand dollars, payable at such time or times as they may prescribe, within eighteen years from the time of such loan, at a rate of interest not exceeding six per cent per annum, payable quarterly on such days and at such places as the said commissioners shall direct. All the existing provisions of law in relation to loans of money for this state, by the commissioners of the canal fund, and in relation to certificates of stock issued under the direction of the said commissioners, shall apply to the loan hereby authorized, and to the certificates therefor issued by the said commissioners.

Act of April 14, 1855.

May borrow \$2,250,000 for enlargement.

§ 85. (1855, *ch.* 528, § 3.) \* \* \* The commissioners of the canal fund shall borrow on the credit of the state, during the fiscal year commencing on the first day of October, 1855, to pay the appropriations made by the second section of this act, a sum not exceeding in the whole two million two hundred and fifty thousand dollars, payable at such time or times as they may prescribe, within eighteen

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<sup>1</sup> Laws of 1837, ch. 360, permitted state banks to subscribe to loans for certain lateral canals.



years from the time of such loan, at a rate of interest not exceeding six per cent per annum, payable quarterly on such days and at such places as the canal commissioners shall direct. All the existing provisions of law, in relation to loans of money for this state by the commissioners of the canal fund, and in relation to certificates of stock issued under the direction of the said commissioners, shall apply to the loan hereby authorized, and to the certificates therefor issued by the said commissioners.

§ 86. (1856, *ch.* 148, § 3.) The commissioners of the canal fund shall borrow on the credit of the state, during the fiscal year commencing on the first day of October, 1856, to pay the appropriations made in the second section of this act, a sum not exceeding, in the whole, two million two hundred and fifty thousand dollars, payable at such time or times as they may prescribe, within eighteen years from the time of such loan, at a rate of interest not exceeding six per cent per annum, payable quarterly, on such days and at such places as the said commissioners shall direct. All the existing provisions of law, in relation to loans of money for this state by the commissioners of the canal fund, and in relation to certificates of stock issued under the direction of the said commissioners, shall apply to the loan hereby authorized, and to the certificates therefor issued by the said commissioners.<sup>1</sup>

Act of  
April 9,  
1856.  
May bor-  
row \$2,250,  
000 at six  
per cent.

§ 87. (1859, *ch.* 271, § 1.) The commissioners of the canal fund are hereby authorized to borrow on the credit of the state two million five hundred thousand dollars, at a rate not exceeding six per cent per annum, and re-imbursable at such periods as shall be determined by the said commissioners, not exceeding eighteen years from the time of making such loan. All the provisions of law in relation to loans made by commissioners of the canal fund, and the issue and transfer of certificates of stock, shall apply to loans authorized by this act, so far as the same are applicable.

Act of  
April 13,  
1859.  
May bor-  
row  
\$2,500,000.

Floating  
debt loan

§ 88. (*Same ch.*, § 2.) The moneys realized by such loan shall be applied exclusively to the payment of claims against the state not otherwise provided for, for work done on the canals of the state, and for private property appropriated by

Moneys,  
how ap-  
plied.

<sup>1</sup> Ch. 363, Laws of 1857, provided for a loan under *ch.* 228, of 1849 (*ante*, § 64), of five hundred thousand dollars, payable in not exceeding eight years.

the state for the use of such canals, and for injury to private property growing out of the construction of the canals, or to the payment of the principal and interest of such loan, and for no other purpose whatever.

Appropriation.

§ 89. (*Same ch.*, § 3.) Two million five hundred thousand dollars is hereby appropriated, to be paid out of the treasury, on the warrant of the auditor of the canal department, from the said moneys, within two years from the time when this act shall take effect, for the payment of claims against the state, specified in the last preceding section, and for the payment of the interest on the loan authorized by this act, which shall become payable prior to the receipt into the treasury of the first annual tax, hereinafter directed to be levied and collected, for the payment of the interest and principal of the loans authorized by this act; but any sum applied to pay interest as aforesaid may be refunded out of the proceeds of the said taxes when received into the treasury.

Annual tax imposed and to be levied and collected.

Duty of comptroller.

Duty of boards of supervisors of counties.

§ 90. (*Same ch.*, § 4.) An annual tax is hereby imposed, and shall be levied and collected in the same manner as other state taxes are levied and collected, sufficient to pay the interest and redeem the principal of the loan hereby authorized, within eighteen years from the time of the contracting thereof. The comptroller shall ascertain and determine what sum, being applied in payment of principal and interest, in the first year after the tax can be collected as aforesaid, and in each succeeding year thereafter, within the period of eighteen years from the time of contracting said loan, will be sufficient to pay the interest and redeem the principal of said loan within said period of eighteen years; and shall in each year apportion the sum so required among the several counties of this state, according to the then last corrected assessment rolls returned to his office, and shall give notice of such apportionment to the boards of supervisors of the respective counties. It shall be the duty of the boards of supervisors of the respective counties to cause the amount so apportioned in each year to be levied, collected and paid to the treasurer of this state, in the same manner as other state taxes. The money collected and paid into the treasury under this section shall constitute a sinking fund to pay the interest and redeem the principal of the loan contracted pursuant to this act, and shall be sacredly applied to that purpose; and if, at any time, the sinking fund shall be insufficient to

comply with the requirements of this section, the comptroller shall increase the sum thereafter to be levied and collected by tax in each year, so as to make the fund adequate for the purpose aforesaid.

§ 91. (*Same ch.*, § 5.) The fourth section of this act, imposing a tax, may be repealed whenever the revenues of the canals, after meeting all present constitutional charges upon them, shall amount to enough to form a sinking fund sufficient to pay the interest and redeem the principal of all loans within the eighteen years mentioned in the first section of this act.

Section 4  
may be  
repealed.  
Query.  
See sec-  
tion 12,  
article 7,  
constitu-  
tion, *ante*.

§ 92. (*Same ch.*, § 6.) This act shall be submitted to the people of this state, at the next general election, and the votes given for its adoption shall be indorsed "constitutional loan," and shall be in the following form: "For a loan of two million five hundred thousand dollars to pay the floating debt of the state," and "Against a loan of two million five hundred thousand dollars to pay the floating debt of the state." The inspectors of the several election districts in this state shall provide a separate box in which the ballots given in pursuance of this act shall be deposited. The ballots shall be canvassed and returned, and the result shall be determined and certified in the same manner as votes given for the office of governor of this state. If a majority of the votes cast, pursuant to this act, shall be "For a loan of two million five hundred thousand dollars to pay the floating debt of the state," then the preceding sections of this act shall take effect; but if a majority of the votes so cast shall be "Against a loan of two million five hundred thousand dollars to pay the floating debt of the state," then the said sections shall not take effect, but shall be inoperative.<sup>1</sup>

To be sub-  
mitted to  
people at  
next gen-  
eral elec-  
tion.

<sup>1</sup> STATE OF NEW YORK, 88 :

We, the secretary of state, comptroller, state engineer and surveyor, treasurer and attorney-general of said state, having formed a board of state canvassers, and having, in conformity to the provisions of an act entitled "An act to submit to the people a law authorizing a loan of two million five hundred thousand dollars, to provide for the payment of the floating debt of the state," passed April 13, 1859, canvassed and estimated the whole number of votes given at the general election, held on the 8th day of November, 1859, in the several counties in said state, under and in pursuance of said act, as appears by the certified statements received by the secretary of state, in the manner directed by law, do hereby determine, declare and certify, that the whole number of votes given under and in pursuance

## OF COSTS AND LEGAL PROCEEDINGS.

Power to  
allow cer-  
tain  
claims.

§ 93. (*R. S.*, § 10.) The commissioners of the canal fund shall have power to allow all claims for moneys paid by the canal commissioners, or any one of them, or by an engineer or agent in their employment, or by any superintendent or toll collector, for judgments recovered against them, or either of them, in any suit instituted for any act done by them, under the canal laws of this state, or for costs and expenses incurred in any such suit, or in any suit instituted by them, or either of them, under such laws.

Shall ex-  
amine.

§ 94. (*R. S.*, § 11.) The commissioners of the canal fund, before they shall allow any such claim, shall examine into the circumstances under which such costs shall have been incurred, or judgments recovered; and shall allow such claims, or such part thereof as they shall deem to be reasonable, if they shall

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of said act was two hundred and two thousand eight hundred and twenty-four, of which there was given one hundred and twenty-five thousand three hundred and seventy having thereon the words, "For a loan of two million five hundred thousand dollars to pay the floating debt of the state," and there was given seventy-seven thousand four hundred and sixty-six votes having thereon the words, "Against a loan of two million five hundred thousand dollars to pay the floating debt of the state," and that a majority of said votes were given in favor of "A loan of two million five hundred thousand dollars to pay the floating debt of the state."

Given under our hands, at the office of the secretary of state of the said state, in the city of Albany, this 16th day of December, in the year of our Lord one thousand eight hundred and fifty-nine.

GIDEON J. TUCKER,

*Secretary of State.*

S. E. CHURCH,

*Comptroller.*

I. V. VANDERPOEL,

*Treasurer.*

LYMAN TREMAIN,

*Attorney-General.*

VAN R. RICHMOND,

*State Engineer and Surveyor.*

Chapter 379, Laws of 1870, authorizing new loans to extinguish certain canal and general fund debts, for which tolls are pledged, was submitted to the people in November, 1870, and a majority of the votes cast were "Against the act to create a state debt." Chapter 700 of 1872, to authorize loans by submitting it to the people, and chapter 734, providing for a tax decided unconstitutional by court of appeals, May 6, 1873. For laws of 1872, legalizing the taxes levied and bonds issued under these laws of 1872 see §§ 164 to 169, and note, *post*.

be satisfied that such commissioners, or other officers making such claims, have been subjected to such costs, expenses or judgments, while acting in good faith in the discharge of their duty, under any law of this state.

§ 95. (*R. S.*, § 12.) The commissioners of the canal fund shall have power, in their discretion, to direct the attorney-general, or to employ other counsel, to take all necessary steps in defending the interests of the state in all suits and proceedings before the supreme court, or any other court, which may arise under the laws respecting the canals, or from the appraisal of damages thereon. To defend suits.

§ 96. (1840, *ch.* 288, § 16.) The commissioners of the canal fund, or the canal commissioners, may, in their discretion, cause a certiorari to be brought by the attorney-general, in behalf of the state, from the determination of the canal appraisers upon any legal or constitutional question, to the supreme court, in cases where any damages have been or shall be awarded upon any claim for the deprivation of any right or pretended right, to the use of any water or water privileges, or fisheries, or for the temporary use or diversion of any water by the canal commissioners. Certiorari may be brought in certain cases.

§ 97. (*Same ch.*, § 17; *modified* 1847, *ch.* 280, § 10, and *Code*, §§ 11, 457.) Such certiorari shall be brought within the time prescribed by law, in reference to appeals in similar cases, to the canal board, and the appraisers shall make a return in writing to the supreme court, within the time, and containing the same matters as required in cases of such appeals; and the supreme court shall determine such certiorari on such returns only, or upon such further returns as the said court may require, and may set aside said appraisal for want of jurisdiction in the appraisers, or for any error committed by them in such determination, except as to the amount of damages awarded, and may award costs in their discretion; and any party interested, may bring an [appeal] on the judgment of the supreme court on such certiorari, to the court [of appeals]. Proceedings.

§ 98. (*Same ch.*, § 18.) Such certiorari, or any judgment thereon, shall not prevent an appeal, as now provided by law, to the canal board, in respect to the amount of any damages awarded by the canal appraisers. Certiorari not to prevent appeal.

People to have preference in courts of this state.

§ 99. (1858, *ch.* 37, § 1.) Any civil action or proceeding, in which the people of this state are a party, and when the attorney-general shall be the attorney of record, shall have a preference in all the courts of this state, and may be moved on the part of the people, out of its order on the calendar; but such preference shall not be had, unless the attorney for the state shall give notice, at the time of the service of notice of trial or argument, of the day on which he shall move the trial or hearing of the action; and in case the same shall not be moved by the attorney for the state on such day, the defendants shall have the right to move the trial or argument of the action, and the trial or argument shall not be moved out of its order on any other day than the day specified in such notice, unless the court shall otherwise direct.

Appeal may be brought by the people without security.

§ 100. (*Same ch.*, § 2; amended 1861, *ch.* 288, § 2.) An appeal may be brought by the people of this state, or any state officer or board of state officers, from any judgment or order against them in any court, without any undertaking or security whatever, and such appeals now pending, or that shall hereafter be brought, shall operate as a stay of proceedings on the judgment or order appealed from.

Such appeal to have preference.

§ 101. (*Code*, § 13; amended 1863, *ch.* 392.) And whenever, in any action or proceeding in which the people of this state or any state officer, or any board of state officers, is or are sole plaintiff or defendant, an appeal has been or shall be brought from any judgment or order for or against him or them, in any court, such appeal shall have preference in the supreme court and in the court of appeals, and may be moved by either party out of the order on the calendar.

No injunction to be issued except in the district where board or duty is located.

§ 102. (1851, *ch.* 488, § 1.) Whenever any duty shall be devolved by law of this state upon any state officer or board of officers, no injunction shall be issued to restrain such officer or board, or any person employed by them, or to prevent the execution of any such law, unless the same be granted by the supreme court sitting in the district in which such board shall be located, or such duty shall be required to be performed at a general term of said court.

Governor may appoint counsel when

§ 103. (*Same ch.*, § 2.) Before hearing any application for an injunction in the cases specified in the preceding section, at least eight days' notice of the time and place of such hearing

shall be served on the officer, board, or person against whom the application shall be made; and in case of the inability or omission of the attorney-general to appear and defend such officer, board, or person, the governor may employ counsel to perform such duty in place of the attorney-general, and to institute any appeal or other necessary proceeding, who shall have the control of such defense or proceeding, and the governor may in his discretion employ counsel to assist the attorney-general in defending such officer, board, person or proceeding.

attorney-general is unable to appear.

§ 104. (*R. S., part 3, ch. 8, tit. 17, § 13.*) Every suit or proceeding in a civil case, instituted in the name of the people of this state, by any public officer duly authorized for that purpose, shall be subject to all the provisions of law respecting similar suits or proceedings, when instituted by or in the name of any citizen, except where provision is or shall be otherwise expressly made by statute; and in all such suits and proceedings the people of this state shall be liable to be nonsuited, and to have judgments of *non pros.* or of discontinuance entered against them, in the same cases, in like manner and with the same effect as in suits brought by citizens, except that no execution shall issue thereon.

Suits instituted in name of people to be governed by same law as those brought in name of citizen.

## CHARGES ON CANAL FUND.

§ 105. (*R. S., § 13, modified 1848, ch. 162.*) All moneys expended in the construction, reparation or improvement of the canals now authorized by law, or allowed or expended by the commissioners of the canal fund under this title; or expended by the commissioners of the canal fund, the canal commissioners, or other officers or agents employed on such canals, pursuant to any law of this state; together with the compensation to such officers respectively (including the salaries of the canal commissioners), shall be charged to the canal fund; and the [auditor] shall also charge to the canal fund, from time to time, so much for the services of the clerks in his office, devoted to the accounts and revenues of the canals, as in his opinion shall be just and proper.

Charges on the canal fund.

§ 106. (1841, *ch. 238, § 1.*) Any deficiencies in the revenues of the lateral canals to pay the interest upon the stocks issued on account of such canals respectively, and the expenses of superintendence and repair thereof, now by law chargeable to the general fund, shall hereafter be paid and provided for by

Deficiencies in revenues of lateral canals to be paid by Erie and Champlain.

the commissioners of the canal fund from the surplus revenues of the Erie and Champlain canals, which may remain after paying the expenses of repairs and superintendence of those canals, and the interest upon the stock issued for the enlargement.<sup>1</sup>

Compensation and expenses of canal appraisers to be paid from revenues.

§ 107. (*Same ch.*, § 2, *modified* 1848, *ch.* 162.) The compensation provided by law to canal appraisers, the expense of their clerk hire, of postage, of recording transcripts, of the entry of their decisions, and any other expense necessarily incurred by them, shall hereafter be paid by the [auditor] out of the canal revenues, and shall be charged to the several canals on whose account such expenses shall be incurred.

Do. returns to appeals.

§ 108. (*Same ch.*, § 3, *modified* 1848, *ch.* 162.) The commissioners of the canal fund may allow [and the auditor] pay out of the canal revenues, to any person who may have been a canal appraiser, a reasonable compensation for making returns to appeals after he shall have ceased to hold such office.

#### OF THE CANAL DEPARTMENT.

Canal department.

§ 109. (1841, *ch.* 218, § 1, *modified* 1848, *ch.* 162.) All business relating to the canals of this state, and improvements connected therewith, required to be performed by the commissioners of the canal fund, the canal board and the [auditor], shall be transacted in rooms appropriated for that purpose in the state hall, to be denominated the canal department. \* \* \*

<sup>1</sup> For previous legislation upon deficiencies of revenues on lateral canals, see 1830, *ch.* 288 — 1833, *ch.* 316 — 1835, *ch.* 202 — 1836, *ch.* 157.

<sup>2</sup> The conclusion of this section was as follows: "And the chief clerk now authorized to be appointed by the commissioners of the canal fund, pursuant to the act passed May 13, 1840, shall be known and recognized in law as chief clerk of said department."

Chapter 288 of Laws of 1840, passed May 13, contained the following provision for the appointment of the chief clerk:

"§ 12. The commissioners of the canal fund shall appoint a chief clerk, and such other clerks as may be necessary. The chief clerk shall also be clerk of the canal board, and shall receive the compensation, possess all the powers and perform all the duties of the second deputy comptroller as now provided by law; and the said office of second deputy comptroller is hereby abolished. The commissioners may allow and pay to the clerks employed by them a compensation not exceeding three thousand dollars annually, which, with the salary of the chief clerk, shall be paid monthly out of the canal fund; and the names of the clerks employed and the sums paid to each shall be annually reported by the commissioners to the legislature."

All the powers and duties conferred by this section upon the commission



## OF THE AUDITOR.

§ 110. (1848, *ch.* 162, § 1, *amended by* 1857, *ch.* 783, § 1.) There shall be an auditor of the canal department, \* \* \* and the said office of chief clerk of the canal department is hereby abolished.

§ 111. (*Same ch.*, § 2.) All the powers and duties of chief clerk of the canal department, and all the powers and duties of the comptroller in relation to the canals, except his powers and duties as commissioner of the canal fund, are hereby transferred to, and vested in the said auditor; and the said auditor shall also be secretary of the commissioners of the canal fund, and of the canal board.

Powers and duties.

§ 112. (*Same ch.*, § 3.) The commissioners of the canal fund shall devise and procure a suitable seal for the said auditor, of which he shall have the custody, and a description thereof shall be recorded in the office of the secretary of state, and remain of record, the expense of which shall be paid out of the canal fund.

Seal to be devised and procured.

§ 113. (*Same ch.*, § 4.) All books and papers pertaining to the duties of said auditor, or to the duties of the commissioners of the canal fund, or of the canal board, shall be deposited in the canal department, and be securely and safely kept by said auditor.

Books and papers, where to be deposited.

§ 114. (*Same ch.*, § 5.) Copies of books or papers mentioned in the preceding section, and transcripts from the minutes of the proceedings of the commissioners of the canal fund, and of the canal board, certified by the said auditor under his official seal, shall be evidence equally and in like manner as the original.

Copies to be evidence.

§ 115. (*Same ch.*, § 6.) The power now given by law to the commissioners of the canal fund, to employ and pay the necessary clerks in the canal department, is hereby vested in the

Auditor to employ and pay clerks.

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ers of the canal fund to appoint, pay and report the names of clerks, and upon the chief clerk of the canal department, by this and subsequent acts of 1848, were transferred to the "auditor" of the canal department by chapter 162 of 1848, printed next above. The remaining sections of chapter 218 of 1841 relate to the examination of accounts of certain state officers, including the accounts of the treasurer, the commissioners of the canal fund, the canal commissioners, superintendents, collectors, and other accounts kept in the canal department.

said auditor; and the names of the clerks employed, and the sums paid to each, and the length of time he was employed, shall be annually reported by the auditor to the legislature at the commencement of its session.

Statement  
of tolls  
collected,  
etc., to be  
reported  
to legisla-  
ture by  
auditor.

§ 116. (*Same ch.*, § 7.) The statement of the tolls collected upon all the canals of the state during each season of navigation, which by section twenty-seven, of chapter three hundred and twenty, of the laws of eighteen hundred and thirty-one, the commissioners of the canal fund are required to prepare and lay before the legislature, shall be so prepared and laid before the legislature by the said auditor, and in addition to the tolls collected, it shall contain an exhibit of the trade and tonnage of the canals, substantially as the same is given in the report for the year eighteen hundred and forty-seven.<sup>1</sup>

Dues to  
state to be  
paid into  
state  
treasury.

§ 117. (*Same ch.*, § 8.) Dues to the state which have heretofore been paid to the commissioners of the canal fund, shall, on and after the first day of October next, be paid into the state treasury.

Balances,  
how to be  
credited.

§ 118. (*Same ch.*, § 9.) All balances standing to the credit of the commissioners of the canal fund on the first day of October next, in any depository, shall, as of that date, be transferred by the said commissioners to the credit of the treasurer of the state.

Treasurer,  
when to  
transfer  
deposits.

§ 119. (*Same ch.*, § 10.) Whenever directed by the commissioners of the canal fund, the treasurer shall transfer from one depository to another, by a draft to be countersigned and entered by the said auditor, any canal fund moneys standing to his credit, and no such moneys shall be transferred by the

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<sup>1</sup> The following is the section referred to, ch. 320, 1831 :

“§ 27. The annual report required from the commissioners of the canal fund shall exhibit a statement of the funds intrusted to their care and management, from the first day of October in every preceding year to the thirtieth day of September in every subsequent year, inclusive, and the accounts of the said funds in the comptroller's office shall be kept in accordance with the provisions of this section; but the said commissioners, separate from their annual report above mentioned, shall prepare and lay before the legislature, with their annual report in each year, a full statement of all the tolls collected upon all the canals of the state during the season of navigation next preceding such session; and also a statement of the rates of toll on all articles transported on said canals, and a comparative statement showing the amount fixed by the constitution and the amount charged.”

treasurer from one depository to another, unless by such directions.

§ 120. (*Same ch.*, § 11.) All moneys now authorized by law to be paid or advanced by the commissioners of the canal fund, and all moneys which shall hereafter be authorized to be paid or advanced from the canal fund, shall, on and after the first day of October next, be paid by the treasurer, on the warrant of the said auditor; but no warrant shall be drawn unless authorized by law, and every warrant shall refer to the law under which it is drawn.

Moneys to be paid by state treasurer.

§ 121. (1872, *ch.* 115, § 4.) Hereafter, each warrant that may be drawn by the auditor of the canal department upon the treasurer, for the payment of any moneys heretofore or hereafter appropriated by law, shall particularly specify the chapter and date of the passage of such law, and when more than one item of appropriation is contained in any such law, then the said warrant shall also specifically state the item of appropriation, out of the sum of which the amount of such warrant shall be paid.

What auditor's warrant on the treasurer to specify.

§ 122. (1848, *ch.* 162, § 12.) The said auditor shall countersign and enter all checks drawn by the treasurer in payment of his warrants, and all receipts for canal moneys paid to the treasurer, and no such receipts shall be evidence of payment unless so countersigned.

Checks to be countersigned.

§ 123. (*Same ch.*, § 13.) The accounts of receipts and payments on account of the canals, and the canal fund and debt, heretofore kept by the commissioners of the canal fund, shall, on and after the first day of October next, be kept by the said auditor.

Accounts of receipts, how kept.

§ 124. (*Same ch.*, § 14.) As soon as possible after the close of each fiscal year, the said auditor shall submit to the commissioners of the canal fund a statement of the receipts and payments on account of the canals and the canal debt, and the balances of the funds on hand, the depositories of the same, and the conditions thereof; which statement shall accompany the annual report of the said commissioners to the legislature.

Auditor to report to commissioners statement of receipts and payments.

§ 125. (1861, *ch.* 177, § 7.) The annual report and statement required by the fourteenth section of the act, chapter one hun-

Statement to be hereafter made

to legisla-  
ture.

dred and sixty-two of the laws of eighteen hundred and forty-eight, to be made by the auditor to the commissioners of the canal fund, shall hereafter be made to the legislature, and shall embrace all the particulars heretofore required in the annual report of the commissioners of the canal fund.

Auditor  
may design-  
ate a  
clerk to  
perform  
his duties.

§ 126. (1848, *ch.* 162, § 15.) In case of the absence or sickness of the said auditor, he may designate one of his clerks as acting auditor, who may perform any of his duties, except the drawing of warrants on the treasury, and the auditing of accounts.

Except  
drawing of  
warrants,  
etc.

§ 127. (1861, *ch.* 177, § 5.) The said auditor may designate one of his clerks as deputy auditor, who, in case of the sickness or absence of said auditor, may perform any of his duties, except such duties as pertain to the contracting board, the drawing of warrants on the treasury, the auditing of accounts, and the transferring of canal fund moneys from one depository to another.<sup>1</sup>

Clerk may  
act as  
secretary  
of canal  
board.

§ 128. (1871, *ch.* 653, § 1.) \* \* \* And the auditor may designate one of his clerks to act as secretary of the canal board, in case of sickness or inability of the auditor to perform that duty. \* \* \*

Appoint-  
ment of  
auditor

§ 129. (1857, *ch.* 783, § 1.) The governor shall appoint, by and with the advice and consent of the senate, the auditor of the canal department, who shall receive a salary of twenty-five hundred dollars per annum. The said auditor shall hold his office for three years, from the first day of January, eighteen hundred and fifty-eight, when the term of office of the present auditor shall expire, and until his successor shall in like manner have been appointed.

Suspension  
for  
violation  
of duty.

§ 130. (*Same ch.*, § 2.) The governor may, upon the requisition of the commissioners of the canal fund, suspend the auditor of the canal department and appoint a suitable person to perform his duties, whenever, during the recess of the legislature, and for thirty days after the commencement of any

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<sup>1</sup> § 8 of this chapter repeals all acts or parts of acts inconsistent therewith, but the acting auditor, under the act of 1848, had fuller powers than the deputy auditor, under the act of 1861. The present practice of the department is to appoint a deputy auditor.

session of the legislature, it shall be made to appear to him that the said auditor has violated his duty, in respect to the issue of the public stocks of this state, or in respect to the public moneys in his charge, or subject to his draft.

§ 131. (1861, *ch.* 177, § 4.) The auditor of the canal department shall hold his office for the term of three years. He shall receive an annual salary of two thousand five hundred dollars, commencing on the first day of October last, in respect to the present incumbent, to be paid monthly out of the canal fund. Term of office and salary.

§ 132. (*Same ch.*, § 6.) The said auditor is hereby authorized to allow and pay the sum of eight hundred dollars annually, or so much thereof as he may deem necessary, beyond the sums now limited by law, as a compensation to the clerks employed by him in the canal department, but the whole sum paid for clerk hire, in the department, in any one year, shall not exceed eight thousand dollars.<sup>1</sup> Compensation of clerks.

§ 133. (1853, *ch.* 36, § 1.) The expenses of the necessary furniture, books, book-binding, blanks, printing, except such printing as is provided for by the act entitled "An act to provide for the public printing," passed March fifth, eighteen hundred forty-six, postage, express transportation, light, and all other necessary incidental expenses of the canal department, shall be paid by the treasurer, on the warrant of the auditor of the canal department, out of any canal funds in the treasury. Expenses of department to be paid by treasurer.

§ 134. (*Same ch.*, § 2.) The compensation of collectors of canal tolls and weigh-masters, the pay of their clerks and assistants, their office rent and necessary office expenses, such as shall be fixed and allowed by the canal board, and the compensation of inspectors of boats and their cargoes, or such portions of compensation and expenses as are not paid directly by the collectors of tolls, shall be paid by the treasurer, on the warrant of the auditor of the canal department, out of any canal funds in the treasury.<sup>2</sup> Pay of canal officers.

§ 135. (*Same ch.*, § 3.) Penalties remitted by the canal board and tolls refunded, if not paid by a collector of tolls, Penalties remitted and tolls

<sup>1</sup> In 1848 the amount was \$4,500. In 1849, it was increased to \$5,500; in 1858, to \$7,200, and by this act of 1861, to \$8,000. Since 1864, specific amounts have been named for each fiscal year, in the appropriation acts for ordinary repairs, "for clerk hire in the canal department."

<sup>2</sup> Modified by § 658, *post*.

refunded,  
how paid.

may be paid by the treasurer, on the warrant of the auditor of the canal department, out of any canal funds in the treasury.

Removal  
of collec-  
tors.

§ 136. (*R. S., ch. 5, title 5; amended 1848, ch. 162, § 2.*) The [auditor] shall also have power to remove any of the said collectors, at his pleasure, and to fill the vacancy occasioned by such removal, until the next meeting of the canal board.

Payment  
of dam-  
ages for  
land, etc.,  
taken.

§ 137. (1840, *ch. 288, § 14; amended 1848, ch. 162, § 11.*) Before [the auditor] shall be required to pay any damages that may have been or may be awarded for any land, waters or streams taken by the canal commissioners and appropriated to the public use, [he] shall be furnished with a certificate from the canal commissioners that the land and premises for which such damages have been awarded have been taken and appropriated for the public use, and have been taken possession of by the canal commissioners in behalf of the state.

Money for  
damages  
to be de-  
posited  
when the  
property  
is incum-  
bered.

§ 138. (1841, *ch. 160, § 5; amended 1847, ch. 280, § 16, and 1848, ch. 162.*) When any damages shall have been awarded by the canal appraisers, or settled by the canal board, for appropriating any lands, streams or waters to the use of any canal, and it shall appear that there is any mortgage, judgment or other lien or incumbrance upon the property appropriated, the [treasurer, on the warrant of the auditor, may in the discretion of the commissioners of the canal fund] deposit the amount so awarded or settled, in any bank selected for the deposit of canal revenues, to the account of such award, to be paid and distributed to the parties entitled to the same, as shall be ordered by the [supreme court] on the application of the said parties, or any of them.<sup>1</sup>

Certificate  
of title  
before  
payment  
of dam-  
ages.

§ 139. (1854, *ch. 332, § 5.*) Before the auditor shall be required to pay any damages that may be awarded, or the amount of any commutation agreed on for the appropriation of land or water, or for the want of a farm bridge, he shall be furnished with a satisfactory abstract of title, and certificate of search as to incumbrances, showing the person demanding such damages or commutation to be legally entitled thereto, which abstract and search shall be retained and filed in his office.

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<sup>1</sup> The original section read \* \* \* "the commissioners of the canal fund may in their discretion deposit the amount so awarded," etc. \* \* \* See 1848, chapter 162, §§ 10 and 11, *ante*, §§ 119 and 120, of this Manual.

§ 140. (1866, *ch.* 836, § 2.) It shall be the duty of the auditor of the canal department to reject and refuse payment of any canal commissioner's draft or certificate, or any other claim against the state, founded on a certificate or measurement of an engineer in the employment of the state, unless such estimate and measurement shall be sworn to and verified as provided in the second section of the act entitled "An act in relation to the public works and the officers connected therewith," passed March twelfth, eighteen hundred and forty-seven.<sup>1</sup>

When to refuse payment of drafts, certificates or other claims.

§ 141. (1847, *ch.* 278, § 2.) No money shall hereafter be advanced or paid to any canal contractor on his contract, except on the sworn certificate of an engineer in such form as the canal board shall prescribe, that he has actually measured the work or material included in the certificate, and believes that the quantities therein stated do not exceed the amounts actually performed or delivered by the contractor, which certificate shall be sworn to before either of the canal commissioners or any judge or justice of the peace.

Money, when to be paid to contractors.

§ 142. (*Same ch.*, § 3.) The sworn measurement referred to in the preceding section shall be given to the canal commissioner, and shall accompany the receipt of the contractor when presented at the canal department for final audit.

Measurement to accompany receipt.

§ 143. (1837, *ch.* 451, § 1; *modified* 1848, *ch.* 162, § 2 and 11.) Either of the acting canal commissioners may draw upon the [auditor] for any sum to be advanced to an engineer to meet the expenses of the engineer department; and if the bond of said engineer shall have been duly filed in the office of the [auditor], and a receipt of the engineer for such draft shall also be filed in the same office, it shall be the duty of the [auditor] to pay the draft; provided the advances to an engineer unaccounted for shall at no time exceed the sum of five thousand dollars.

Expenses of engineer's department.

Advances not to exceed five thousand dollars.

§ 144. (*Same ch.*, § 2; *modified* 1848, *ch.* 162, *etc.*) Before any advance shall be made to an engineer, he shall execute and file, in the office of the [auditor], a bond to the people of this state, for the faithful expenditure of the moneys which shall be intrusted to him, in such penalty and form as the canal

Engineer to file bond.

<sup>1</sup> The act referred to by the title is chapter 278, which was passed May 12, 1847. No act was passed March 12, 1847.

board shall direct, and with such sureties as the [auditor] shall approve, upon which said bond the said engineer and his sureties shall be responsible to the state for moneys advanced to him as aforesaid.

Account of expenses.

§ 145. (*Same ch.*, § 3; *modified* 1848, *ch.* 162.) Such engineer shall, as often as once in ninety days, render his account to the [auditor], who shall audit the same; and if he shall omit to render his account, or his accounts as rendered be not satisfactory, the [auditor] shall notify the canal commissioners and the commissioners of the canal fund thereof; and no further advances of money shall be made to such engineer.

Engineer's accounts to be certified by commissioner.

§ 146. (*Same ch.*, § 4; *modified* 1848.) Before any engineer's account for expenditures shall be presented to the [auditor], the canal commissioner having charge of that part of the canal on which such engineer is employed shall certify on such account that he has examined the same; that the several disbursements specified therein were made under his direction on the canal, or for payments necessary to be made thereon; and that he believes such disbursements to be proper and reasonable and to have been made as charged.

Advances to superintendents.

§ 147. (*R. S.*, § 6; *modified* 1848, *ch.* 162.) The [auditor] shall advance to each of the superintendents of canal repairs such sums as in [his] opinion shall be required in the execution of their duties, not exceeding at any time five thousand dollars.<sup>1</sup>

Superintendent shall make detailed estimates.

§ 148. (1837, *ch.* 451, § 7; *modified* 1848, *ch.* 162.) Before any advance of money shall be made to a superintendent of canal repairs by the [auditor of the canal department], he shall make out a detailed statement, in such form as the said [auditor] shall prescribe, of the several anticipated objects of expenditure on the line of canal under his charge.

Estimates to be certified to and filed.

§ 149. (*Same ch.*, § 8; *modified* 1848, *ch.* 162.) If the said estimate shall be filed in the office of the [auditor] with the certificate thereon of the acting canal commissioner, stating that, in his opinion, the whole amount, or, if less than the whole amount, what portion of the said estimate should be advanced, the [auditor] may make advances on the same, in

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<sup>1</sup> This section is also modified by the two following sections of chapter 451, Laws of 1837.



such sums and as often as he may deem necessary ; provided such advances shall not exceed the amount certified by the commissioner.<sup>1</sup>

§ 150. (1842, *ch.* 310, § 1; *amended* 1855, *ch.* 535, § 3.) Purchases  
how made  
All purchases for the use of any department, office, or work of the government, shall be for cash, and not on credit or time. Each voucher, whether for a purchase or for a service, or other charge, shall be filled up at the time it is taken ; and in all cases where the payment is not made directly by the treasurer, or governor, proof in some apt form shall be furnished on oath that it was so filled up at the time it was taken, and that the money mentioned therein to have been paid was, in fact, paid in cash or by draft on some specified bank.

The auditor, in all cases where moneys are paid from the canal revenues, loans or fund, and the comptroller, in all cases where payments are made from any other revenue or fund, shall, from time to time, prescribe rules, regulations and forms to secure the faithful observance of this section, and may in all cases, if they shall deem it necessary, require proof on oath of the payment of money as aforesaid. Auditor  
shall pre-  
scribe  
rules,  
proof, etc.

§ 151. (*R. S.*, *ch.* 9, *title* 9, § 42; *modified* 1848, *ch.* 162.) To settle  
canal com-  
mission-  
ers' ac-  
counts,  
and report.  
It shall be the duty of the canal commissioners to account and settle with the [auditor] on or before the fifteenth day of January in each year, for all moneys received by them, and each of them from the [ \* \* \* ] canal fund, or belonging to that fund ; and such settlement, specifying the sums respectively paid to all contractors, engineers, agents and servants of every description, employed on the canals, and to all persons having received a compensation for damages, and the names of such persons shall, without delay, be reported by the [auditor] to the legislature.

§ 152. (1859, *ch.* 376, § 1.) Whenever, from interest, or having been counsel for any claimant of damages against the state, in the matter of such claim, or being related to such claimant, any canal commissioner shall be disqualified from acting in any case where by law any power or duty is imposed upon such commissioner, or the board of canal commissioners, on filing in the office of the auditor of the canal department the certificate Auditor to  
act in  
place of  
canal com-  
missioner  
when lat-  
ter dis-  
qualified.

<sup>1</sup> For further provisions relating to detailed estimates, see 1866, chapter 336, § 3; *post*, § 338.

of such commissioner, stating his disqualification, the said auditor is authorized, and it shall be his duty, to act in the place of such disqualified commissioner, in the matter of such claim.

Duties of auditor as to water on Syracuse level.

§ 153. (1861, *ch.* 124, § 6.) The auditor of the canal department is authorized and required, whenever there is a short supply of water for the Syracuse level, insufficient to maintain fully seven feet in depth upon all portions thereof, and supply the Oswego canal, to suspend the weighing of boats at the Syracuse weigh-lock, and stop all use or leakage of water through the same; and in case of such deficiency the canal commissioners are authorized and directed to make any arrangement to supply the same within their power, which shall not cost over thirty thousand dollars for the first year, and not to exceed five thousand dollars a year thereafter.

Forms of contracts, etc.

§ 154. (*R. S.*, *ch.* 8, *title* 5, § 4; amended 1848, *ch.* 162.) The attorney-general, whenever requested by the comptroller, [auditor] or the [state engineer and surveyor], shall prepare proper drafts for contracts, obligations and other instruments which may be wanted for the use of the state.

Forms of clearances, bills of lading and statements.

§ 155. (*R. S.*, *ch.* 9, *title* 9, *Art. IX*, § 193; amended 1848, *ch.* 162.) The [auditor] shall prepare the forms of all clearances, bills of lading, statements and other papers necessary to be used under the provisions of this title, and shall from time to time transmit the same to the different officers and agents on the canal, for whose use they may be required.

#### PAYMENT OF INTEREST.

Interest on drafts, certificates, etc.

§ 156. (1864, *ch.* 266, § 1.) All canal commissioners' drafts and certificates, and all estimates of engineers, whether monthly or final, made, given or issued since the first day of November, one thousand eight hundred and sixty-two, for work done and materials furnished for the canals of this state, and all awards made by the canal board and the canal appraisers, shall be entitled to draw interest at the rate of six per cent per annum, as follows: On monthly estimates, interest shall be paid from and after the twentieth day of the month succeeding that in which the work was done; on final estimates interest shall be paid from and after ninety days after the work was done; on awards by the canal board, interest shall be paid after sixty days from

the date of the award; on awards by the canal appraisers, interest shall be paid after ninety days from the date of the award.<sup>1</sup>

§ 157. (*Same ch.*, § 2.) No interest shall be paid on any draft, certificate, estimate or award after the auditor has given or shall give notice that he was or is prepared to pay the same. When to cease.

§ 158. (*Same ch.*, § 3.) The treasurer shall pay, on the warrant of the auditor of the canal department, all sums authorized to be paid by this act, out of any moneys in the treasury appropriated or to be appropriated for the payment of interest, estimates and awards. Treasurer to pay warrants of auditor.

#### ACCOUNTS, PRINTING, ETC.

§ 159. (1831, *ch.* 320, § 24.) The present fiscal year of the office of the treasurer of this state shall close on the thirtieth day of September next; and the future fiscal years of that office shall be from the first day of October in the preceding, to the thirtieth day of September in the succeeding year, inclusive.<sup>2</sup> Fiscal year.

§ 160. (*Same ch.*, § 25; *modified* 1848, *ch.* 162.) All books and accounts in the office of the comptroller [or auditor] shall be kept, and all the duties of that office shall be performed, with reference to the aforesaid change in the fiscal year of the treasurer's office, and in accordance with that change. Books and accounts.

§ 161. (*Same ch.*, § 26; *modified* 1848, *ch.* 162.) All officers and persons required to render annual accounts to the comptroller [auditor] or treasurer, shall close those accounts on the thirtieth day of September in each year, and shall render such accounts as soon after that day in every year as may be practicable. Annual accounts.

§ 162. (1859, *ch.* 437, § 1.) The comptroller, secretary of state, treasurer, state engineer and surveyor, attorney-general, canal commissioners, auditor of canal department, commission- Annual reports.

<sup>1</sup> For previous legislation on the subject of payment of interest, see Laws of 1858, chapter 263; 1859, chapter 149; 1860, chapter 490; 1862, chapter 562, and 1863, chapter 194.

<sup>2</sup> As to examination of treasurer's accounts in case of death or resignation, see 1839, chapter 23.

ers of the canal fund, commissioners of the land office, canal appraisers \* \* \*, and all other state officers or heads of departments, required by law to submit an annual report to the legislature of this state, are hereby required to complete their several annual reports for the previous fiscal year, ending on the thirtieth day of September of each year, on or before the tenth day of December succeeding, and cause the same, on or before that day, to be placed in the hands of the person having the contract to do the printing for the senate and assembly under and in pursuance of the provisions of section 2, chapter 24, of the Laws of 1846.<sup>1</sup>

Of the  
public  
printing

§ 163. (1846, *ch.* 24, § 2.) The printing for the senate and assembly, for the comptroller, secretary of state [state engineer and surveyor], commissioners of the land office and canal fund, the banking department, and all other printing for any and every of the state officers, shall hereafter be done as follows:

The comptroller and secretary of state shall give at least twenty days' notice in two public newspapers published in each senate district in this state, that they will, on or before a day to be specified in said notice, receive sealed proposals for the printing provided to be done under this section for two years, to be performed in the same style of execution as to type and paper as that heretofore furnished; and that they will receive separate bids for the printing to be done for the senate, assembly, and public officers, or any portion of the printing to be done for the public officers; at the expiration of which time they shall open said proposals, and enter into a contract or contracts with such person or firm as shall make the lowest offer or bid to do such printing, and shall give security in a bond to the people of the state of New York, to the satisfaction of the comptroller and secretary of state, for the faithful performance of his or their contract, which contract shall continue in force for two years from the time of making the same.<sup>2</sup>

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<sup>1</sup> As to reports, formerly required from commissioners of the canal fund, see 1842, chapter 114, section 11.

The provisions of chapter 350 of Laws of 1847, "An act in relation to reports of state officers," seem to relate to that year *only*.

<sup>2</sup> For subsequent laws relating to public printing see 1847, chapter 254—1854, chapter 197—1870, chapter 113.

## TAX FOR DEFICIENCIES, ETC.

§ 164. (1873, *ch.* 12, § 1.)<sup>1</sup> The board of supervisors of any county in this state that have not levied the three and one-half mills tax ordered to be levied by the comptroller of the state for canals and general fund deficiencies are hereby authorized, in their discretion, to levy the same at a special meeting, called for that purpose, in the manner now provided by law for calling special meetings, and all laws relating to the levying and collecting of taxes now in force shall apply to the levying and collecting of taxes authorized to be levied by this act.

Board of  
super-  
visors  
may  
levy tax.

§ 165. (*Same ch.*, § 2.) The said boards of supervisors are hereby authorized, in their discretion, to issue the bonds of their respective counties, bearing not more than seven per cent interest per annum, and payable at such time or times, not later than March first, one thousand eight hundred and ninety-three, as said boards of supervisors shall designate, sufficient to pay the tax mentioned in the first section of this act; and any bonds authorized by any board of supervisors in pursuance of this act shall be a lawful debt against the county authorizing such loan, and it shall be the duty of the board of supervisors of any county, issuing bonds under this act, to levy a tax to pay such bonds and the interest thereon as they shall become due.

Or may  
issue  
bonds and  
tax to pay  
bonds.

§ 166. (*Same ch.*, § 3.) The resolutions of the board of supervisors of any county in this state already passed authorizing the issue of bonds to pay the tax mentioned in the first section of this act, or any resolutions to extend the time of payment of any bonds now due or to become due, with the

Former  
resolu-  
tions  
legalized.

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<sup>1</sup> "An act to authorize the boards of supervisors of the several counties of the state to levy a tax to pay the three and one-half mills tax for canals and general deficiencies and to authorize a loan for that purpose, and to ratify the acts of any board of supervisors in issuing bonds to meet said tax or in extending any loan to enable said boards of supervisors to pay said tax," passed February 10, 1873. See, also, Laws of 1872, chapter 760, page 1156.

Chapter 700 of 1872. "An act to supply deficiencies in former appropriations, etc., by an issue of the bonds of the state, and to provide for submitting the question thereon to the people," and chapter 734 of 1872, "An act to provide means to pay the canal and general fund deficiencies directed to be paid by act chapter 700 of 1872, were held to be unconstitutional by the court of appeals, in the case of *The People ex rel. Nelson K. Hopkins, comptroller, etc., respondents v. The Board of Supervisors Kings County*," decided May 6, 1873. See opinion by Judge Allen.

consent of the holders of such bonds and for the application of any money raised by tax to pay such bonds, for the purpose of paying such tax, are hereby ratified and confirmed.

Bonds,  
how  
issued.

§ 167. (*Same ch.*, § 4.) All bonds issued under and pursuant to this act shall be signed by the chairman and clerk of the board of supervisors, and countersigned by the county treasurer of the county at the time they are issued; such bonds shall be in sums of not less than one hundred nor more than one thousand dollars each, and shall not be disposed of by such county treasurer for less than the par value thereof.

Action of  
board of  
supervis-  
ors  
legalized.

§ 168. (1873, *ch.* 643, § 3.) The action of all boards of supervisors, assessors and collectors of taxes, and all other officers of this state, in imposing, levying and collecting taxes, in obedience to what purported to be chapter seven hundred and thirty-four of the laws of eighteen hundred and seventy-two, and in paying over moneys raised thereby, is hereby ratified, confirmed, legalized and made valid the same as if the said chapter had been and was a constitutional and valid act of the legislature; and all moneys paid by any county into the treasury of the state, or by any town or city into the county treasury, in consequence thereof, are hereby declared to be legal, and the amount so paid by any county, city or town shall be held and taken as a satisfaction, in whole or to the extent of such payment, of the amount which said county, city or town would be required to and would raise by tax under the provisions of section two of this act; and said county, city or town, to the amount of such payment, shall not be compelled or required to raise money by tax in pursuance of section two of this act. But if any of said moneys shall not yet have been paid into the state treasury by any county, the same shall not apply in such satisfaction until the same shall have been paid into the state treasury; and if any of said moneys shall not yet have been paid into the county treasury by any city or town, the same shall not apply in such satisfaction until the same shall have been paid into the county treasury.<sup>1</sup>

Do.

§ 169. (*Same ch.*, § 5.) The action of any and all boards of supervisors and other public officers of any county or city, who have heretofore borrowed money for their respective counties,

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<sup>1</sup> Section 4 of this act relates to Kings county.

or issued the bonds thereof, for the purpose of raising money with which to pay to the state treasury the amount required of their respective counties by the comptroller according to said supposed chapter seven hundred and thirty-four, is hereby ratified, legalized, confirmed and made valid. And any board of supervisors, or other public officers of any county or city, may hereafter, in accordance with any law authorizing them to borrow money or issue bonds for the purpose of paying the amount of money required by said supposed chapter, proceed to borrow money or issue bonds under such law to raise the money required of said city or county by this act.

## REPAIR CONTRACT SYSTEM ABOLISHED.

§ 170. (1870, *ch.* 55, § 1.) All laws and parts of laws requiring the letting and keeping the canals in repair, by contract, are hereby repealed, and the contracting board is hereby abolished. But the repeal of the said laws shall not, except as otherwise provided by this act, invalidate the contracts heretofore made, or discharge any of the contractors from the duties and obligations imposed by such contracts or the said laws, and the right of the said contractors to receive from the state any pecuniary compensation or other relief under said contracts, shall not be affected thereby.<sup>1</sup>

Repair  
contract  
system  
abolished.

<sup>1</sup> THE REPAIR CONTRACT SYSTEM.

All the repair contracts now in force on the canals of this state expire on the first day of January, 1874. For this reason, it is not deemed necessary to compile at length the laws relating thereto.

The following is a condensed statement of the statutes under which all repair contracts have been made:

Ch. 327 of 1854, authorized the canal commissioners to let by contract for repairs, one, and not more than three, of the superintendent sections of the Erie canal, with provision for inventories, payments, suits, penalties, etc.

Ch. 554 of 1855, extended the provisions of the act of 1854, to any completed superintendent section of the canals, under the approval and direction of the canal board.

Ch. 329 of 1854, established the enlargement contracting board, consisting of the canal commissioners, the comptroller and the state engineer and surveyor.

Ch. 105 of 1857, directed the enlargement contracting board to let all the completed sections not then under contract for repairs, and authorized the board, in its discretion, to let the uncompleted portion of the canals. It also contained provisions relating to inventories, contracts, payments, publication of notices, penalties, clerk, etc. Section 12 of this act, made it the duty of the contracting board to dispense with the office of superintendent of re-

pairs, in all cases where the repairs were under contract, and in certain other cases where the duties might be performed by the resident engineers.

Ch. 783 of 1857, substituted the auditor in place of the comptroller in the contracting board.

Ch. 495 of 1859, prohibited the canal board from canceling enlargement or repair contracts, and prescribed the duties of certain officers whose duties relate to the canals of this state.

Ch. 86 of 1860, repealed eight sections of chapter 105 of 1857, including section 12, relating to the dispensing with superintendents, and also provided that all laws and parts of laws repealed by section 19 of chapter 105 (relating to appointment of officers named in the act), should be revived and in full force.

Ch. 177 of 1861, created the "repair trust fund," of moneys held as security for the performance of repair contracts, directed its investment, and provided for forfeiture to the state or repayment to the contractor.

Ch. 348 of 1862 amended the law of publication of notices.

Ch. 252 of 1864, authorized the contracting board to make additional allowances to contract prices, permitted the surrender or forfeiture of the contracts in certain cases, and directed that such sections should be immediately relet.

Ch. 577 of 1867, amending ch. 105 of 1857, contained many important provisions. It gave an appeal to the canal board from the award of contracts, directed the deposit of United States bonds as securities, to be held in trust for their faithful performance, and prescribed the duration and the construction of the terms of the contract, and the duties of officers relating thereto. It also provided for a covenant, that the contractor should bear and pay the cost of every break in the canal or failure of structures, to the extent and limit of \$7,000; for the correction of informalities in proposals; for the refusal of disadvantageous or excessive bids, and for certain exceptions, changes and rules, that might be made in repair contracts. Sections 11 and 12 were as follows:

"§ 11. All acts and parts of acts inconsistent with the provisions of this act, are hereby repealed.

"§ 12. Nothing herein contained, nor in the act hereby amended, shall authorize the appointment or continue in office beyond the first day of June next, any superintendent of repairs on the canals of this state, nor shall any engineer or canal commissioner authorize any work to be performed, or incur any expense relating to said canals, except in pursuance of an appropriation duly made therefor by the legislature or canal board, or except in case of a breach in the canals when the same shall be abandoned by the contractor having the same in charge."

It was held, in the court of appeals, *Kearney v. Bell*, 38 N. Y. 386, that the first clause of section 12, relating to superintendents of repairs, did not affect the power of appointment of superintendents by the canal board, conferred by the Revised Statutes (*ante*, § 8). That although this power in certain cases was taken away by chapter 105 of 1857, it was revived by chapter 86 of 1862, and the restrictive clause in section 12 only relates to its own provisions, and those of the act of 1857, which it amended, from neither of which was this power of appointment derived. For construction of the next clause of this section, see canal board proceedings, 1872. Page 82, chapter 869 of 1868, authorized the attorney-general to test the validity of certain contracts.

Since 1863, the annual appropriation acts, for collection of tolls, superin-



tendence, ordinary repairs, etc., have specially provided for the payment of contractors. From 1867 to 1873, these appropriation acts have all contained the following provisions: "The auditor of the canal department shall notify the canal commissioners of the sum of money that will be needed to pay the drafts during the fiscal year to the contractors for repairs under their contracts upon their respective divisions, and he shall reserve such sums out of the appropriations made by this act for the purpose of paying the monthly drafts to contractors, and no part of the sums so reserved shall be paid or applied to any other object or purpose, and no draft shall be drawn on the auditor in favor of the contractors unless upon a certificate from the canal commissioner in charge that the contractor has fulfilled his contract during the preceding month."

The practice has been for the commissioner to require from the superintendent in charge of the section, a similar certificate before signing the drafts.

For construction of the terms of repair contracts, see 7 Barb. 208, and canal board proceedings, 1868, pp. 64 and 68. As to liability of contractors see 4 Hill, 630; 5 Lans. 293 and 344, and *Robinson v. Chamberlain*, 34 N. Y. p. 389.

Ch. 55 of 1870, abolishing the repair contract system, is printed in full in ch. 9, title 9, art. 4, "Of the canal board," *post*, §§ 523-534, etc., of this Manual.

For a construction of the provisions of this act, see canal board proceedings, 1870, p. 87.

## TITLE V.

### OF THE PUBLIC LANDS AND THE SUPERINTENDENCE AND DISPOSITION THEREOF.

**ARTICLE 1.** Of the general powers and duties of commissioners of the land office.

\* \* \* \* \*

**6.** Of the duties of the commissioners of the land office in regard to lands belonging to the canal fund.

## ARTICLE I.

### GENERAL POWERS AND DUTIES.

**SECTION 184.** Commissioners of land office, of whom to consist.

185. To superintend the public lands and to direct the granting thereof.

186. What number may execute powers of board.

187. Secretary of state to convene commissioners; who to preside at meeting.

188. Deputy secretary of state to be clerk; his duty.

189. To prescribe form of letters patent; reservation of gold and silver mines.

SECTION 190. To make compensation for failure of title to lands purchased of state.

191. May require attendance of witnesses and the production of books, papers, etc.

SECTION 184. (*Const., Art. V, § 5.*) The lieutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be the commissioners of the land office.

Powers  
and duties.

§ 185. (*R. S., § 1.*) The commissioners of the land office shall have the general care and superintendence of all lands belonging to this state, the superintendence whereof is not vested in some other officer or board. They shall also have power to direct the granting of the unappropriated lands of the state, according to the directions from time to time to be prescribed by law.

What  
number  
may  
execute  
the powers  
of the  
board.

§ 186. (*R. S., § 2, modified Const., Art. V.*) All the powers now vested or hereafter to be vested in the commissioners, may be executed by a majority of the board, or by any three of them, if the [state engineer and surveyor] be one of such three.

How con-  
vened and  
presided  
over.

§ 187. (*R. S., § 3.*) The secretary of state shall convene the commissioners as often as may be necessary for the transaction of business. At every meeting the lieutenant-governor, if present, shall preside; if he be absent, the members present shall choose their chairman.

Deputy  
secretary  
of state to  
be clerk.  
His duty.

§ 188. (*R. S., § 4.*) The deputy secretary of state shall be clerk to the commissioners, and shall enter the minutes of their proceedings in a book to be provided for the purpose, which shall be kept in the secretary's office, in proper order, with the papers and documents which may be presented to the board.

Letters  
patent.

§ 189. (*R. S., § 5.*) All letters patent hereafter to be granted shall be in such form as the commissioners shall direct, and shall contain an exception and reservation to the people of this state of all gold and silver mines.

Failure of  
title.

§ 190. (*R. S., § 6.*) Wherever the title of the people of this state to lands granted under its authority shall fail, and a legal

claim for compensation, on account of such failure, shall be preferred by any person entitled thereto, it shall be the duty of the commissioners to direct the payment of the original purchase-moneys, which may have been made to the state by such person, with interest at the rate of six per cent from the time of such payment, to be paid out of the treasury on the warrant of the comptroller.

§ 191. (1839, *ch.* 134, § 1.) The commissioners of the land office may require the attendance of any person as a witness on the part of the state, whenever in their opinion the interest of the state may render it proper, in relation to any application that is or may be pending before them; and for that purpose they may issue subpoenas, which shall be signed by their chairman for the time being, commanding any such person to appear and testify before them, relative to the subject of such application, and to bring forward and to produce to them, any writings, books or papers, that may be designated in such subpoena in his possession, or within his control; and every person who after being served with such subpoena and tendered the legal fees, shall, without reasonable cause, refuse or neglect to appear and produce such writings, books or papers, or appearing, shall refuse to testify as to any facts within his knowledge relative to the subject-matter of such application, shall forfeit one hundred dollars to the people of this state, and shall be liable to be committed to prison by the said commissioners until he shall submit to testify and produce such writings, books or papers; and all expenses necessarily incurred in procuring the attendance of any witness and his legal fees, upon being certified by the said commissioners, shall be paid by the treasurer on the warrant of the comptroller.

Attend-  
ance of  
witnesses.

Penalty.

## ARTICLE VI.

### OF THE DUTIES OF THE COMMISSIONERS OF THE LAND OFFICE IN REGARD TO LANDS BELONGING TO THE CANAL FUND.

SECTION 192. Commissioners to dispose of such lands.

193. Expenses and surveys thereof, how defrayed.

194. Conditions of such sales.

195. To appoint agents to prosecute for trespasses.

196. Agents to give security.

197. May bring suits in name of the people.

198. Compensation and expenses of agents, how paid.

## OF THE SALE OF ABANDONED LANDS.

**SECTION 199.** Canal board to determine when lands taken for canal may be sold.

200. Canal board to determine abandoned lands ; how disposed of.

201. Original owner or owners to have preference in sale of such lands.

202. Commissioners of land office may require proof of right before grant.

203. Act of 1857 extended in certain cases.

204. Not to apply to lands heretofore sold or to dry docks at Oswego.

Canal fund  
lands, how  
disposed  
of.

**SECTION 192.** (*R. S.*, § 78.) The commissioners of the land office shall dispose of the lands conveyed to this state for the benefit of the canal fund, in such manner, at such times, and on such terms, as they shall judge best for the interest of the canal fund ; and for that purpose, they shall, from time to time, cause such surveys and examinations to be made as they shall deem necessary.

Expenses  
of surveys.

§ 193. (*R. S.*, § 79.) The expenses of such surveys and examinations shall be defrayed in the same manner as the expenses relating to the surveys and sales of the unappropriated lands of this state.

Purchase-  
money,  
how pay-  
able.

§ 194. (*R. S.*, § 80.) Whenever any part of such lands shall be sold, the commissioners shall require at least fifty per cent of the purchase-money to be paid in hand, or secured to their satisfaction, on other property, payable in three annual installments, with interest ; and in either case, the residue of the purchase-money shall be payable in three yearly payments, with interest at the rate of six per cent per annum.

Appoint-  
ment of  
agents.

§ 195. (*R. S.*, § 81.) The commissioners of the land office shall, from time to time, appoint discreet agents, to prosecute all trespassers on any lands belonging to the canal fund.

Security.

§ 196. (*R. S.*, § 82.) Every such agent shall give such reasonable security, from time to time, to the people of this state, for the faithful execution of his trust, as the commissioners shall require and approve.

Powers  
and du-  
ties.

§ 197. (*R. S.*, § 83.) He may bring suits in the name of the people against all persons who shall have trespassed on the said lands, and may prosecute the same to judgment and execution.

§ 198. (*R. S.*, § 84.) The costs and expenses which such Expenses.  
agent may incur in any such suit, together with such compensation for services as the commissioners shall deem just, shall be paid to him out of the treasury; but no allowance shall be paid to him for any suit in which the defendant shall succeed on the trial, unless the commissioners shall be satisfied that there was probable cause for bringing such suit.

## OF THE SALE OF ABANDONED LANDS.

§ 199. (1849, *ch.* 352, § 3.) Whenever the canal board shall Lands,  
when to be  
sold.  
by resolution determine that any lands taken for the purposes of the canal may be sold beneficially to the state, the commissioners of the land office may sell, grant, and convey the right, title and interest of the state in such lands, and the proceeds of such sale shall be credited to the fund appropriated for the construction of the canal for which such lands were taken.

§ 200. (1857, *ch.* 267, § 1.) Whenever the canal board shall Abandon-  
ed lands.  
by resolution determine that any lands taken for the purposes of the canals of this state have been abandoned, and that the title of the state to said lands was acquired by purchase from the owner or owners, it shall and may be lawful for the commissioners of the land office to sell, grant and convey the right, title and interest of the state in such lands, and credit the proceeds of such sale to the fund appropriated for the construction of the canal enlargement, improvements and repairs of the same; and in case it shall appear that the title of the state to said lands was acquired by grant or otherwise from the owner or owners, and without the payment of any sum or sums whatever by the state for such lands, it shall and may be lawful for the commissioners of the land office to release all the right, title and interest of the state in and to such lands to the persons so granting the said lands to the state, or from whom the title was acquired by the state, to his or their heirs, grantees or assigns, upon and subject to such rules, regulations and requirements as may be deemed for the interest of the state; provided that where any of such lands shall, at the time of such abandonment, be used as or for a hydraulic canal, the conveyance shall not in any respect prevent the future use of the land for the same purpose, but shall expressly reserve the right to continue such hydraulic canal.

§ 201. (*Same ch.*, § 2.) The original owner or owners of said Do.  
abandoned canals, their heirs or assigns, who may be the owners

of the lands adjoining thereto, shall have the preference for one year subsequent to the passage of said resolutions by the canal board, to purchase the same by payment to the commissioners of the land office of the amount originally paid by the state for said lands.

Do.      § 202. (1869, *ch.* 196, § 1.) Whenever the commissioners of the land office by any existing statute have power to make a grant of any lands or interest therein to any party, they shall have power summarily to inquire into the rights of such party thereto, upon such proof as by regulation they shall prescribe; but this act shall not apply to grants of land under water.

Do.      § 203. (1869, *ch.* 361, § 1.) The act entitled "An act in relation to abandoned canals," passed April sixth, eighteen hundred and fifty-seven, being chapter two hundred and sixty-seven of said laws, shall apply, and is hereby declared to extend to cases in which the land at the time taken for canal purposes was owned by the state, but with the adjoining lands were subsequently conveyed by the state without any express reservation of the portion covered by the canal, so that under the said law the grantees of the state, their heirs and assigns, shall stand in the same position with respect to abandoned canals, as the like representatives of individuals hold and enjoy; provided they shall pay therefor such sum or sums as the commissioners of the land office shall deem just and equitable.

§ 204. (*Same ch.*, § 2.) Nothing herein contained shall be considered as applying to any abandoned canals heretofore sold and conveyed by the state; nor to any dry docks built by permission of the state within the canal blue lines in the city of Oswego.<sup>1</sup>

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<sup>1</sup> DIRECTIONS TO APPLICANTS FOR GRANTS OF ABANDONED CANAL LANDS.

1st. *Directions for procedure before the canal board to procure the abandonment of canal lands.*

CANAL DEPARTMENT,  
ALBANY, August 19, 1861. }

At a meeting of the canal board, held at the canal department on the 16th of August, 1861, the following resolution was adopted:

*Resolved*, That hereafter, applicants to the canal board for the abandonment of any portion of the canal lands of this state under chapter 267, Laws of 1857, will be required to comply with the following requirements, and furnish the following documents, to wit:

1st. The applicant must present an accurate description and map of the lands sought to be declared abandoned, made by the resident engineer upon the canal nearest to such lands, together with the statement of the opinion, of such engineer, as to the propriety of granting or refusing such application, and his reasons for such opinion, and such map to present a view of as much of the premises surrounding the lands asked to be abandoned as will, together with the statement of the engineer, give all the facts necessary for a full understanding of the merits of the application.

The description of the lands sought to be declared abandoned should be written out in full from the survey of the resident engineer (or prepared by a sworn surveyor), for insertion in the Patent of Release by the people of the state of New York, to the applicant, and the correctness of said survey bill be certified by the engineer or surveyor making the same.

2d. The applicant must also, in his application to this board, set forth in what manner the state originally obtained title to the lands applied for, whether by purchase or otherwise; and in case the state originally purchased the same, then the applicant shall refund to the state for the benefit of the canal enlargement or repair fund, the proportionate amount paid originally for the lands sought to be declared abandoned.

3d. The applicant will be required to furnish and present a complete abstract of title to the lands applied for, showing a continuous chain from the time the canal was constructed down to the time of his application, proving (unless he be the original owner) the various conveyances down to such applicant, from the original owner, at the time the canal was constructed.

A county clerk's abstract of title, or certified copies of the several title deeds, should be produced in this connection, and remain on file in the canal department, as evidence of title.

4th. It should be made clearly to appear from the maps, survey bill and title papers, whether the applicant owns the adjoining lands on only one or both sides of the canal sought to be declared abandoned.

5th. The petition of the applicant to this board must contain all the facts in connection therewith, and should also state whether any of the lands sought to be declared abandoned are used as for a hydraulic canal, and said petition should be duly verified.

I certify the foregoing to be a true extract from the minutes.

W. MCGOURKEY, *Deputy Auditor*.

*2d. Directions for procedure before the commissioners of the land office, to obtain letters patent for canal lands declared abandoned by the canal board.*

At a meeting of the commissioners of the land office, held at the office of the secretary of state, on the 16th of August, 1861, the following resolution was adopted:

*Resolved*, That hereafter applicants for grants of abandoned canal lands, under chapter 267, Laws of 1857, be required, in connection with the application to the commissioners of the land office, to furnish a certified copy (under seal of the auditor of the canal department) of the resolution of the canal board, declaring the lands applied for, abandoned for canal purposes and, also when any consideration is paid for the lands to the state, the treasurer's receipt, in full, for the amount as fixed and determined in the proceedings of the canal board, or this board.

In all cases where the applicant owns the adjoining lands on both sides of the canal, he will be entitled (upon complying with the requirements of this board) to a release of the entire abandoned canal running through his lands.

The original owner, at the time the canal was constructed, shall have no claim to the abandoned canal, unless he owns the lands adjacent to such canal. In case he has conveyed the adjoining lands, he thereby forfeits his claim to such abandoned canal. The applicant, in order to obtain title from the state for such canal lands, must either be the original owner (if still owning the same) of the lands, when the canal was constructed, or the assignee of the original owner, as per decision of the attorney-general, rendered to this board, September 21st, 1858.

Whenever the applicant owns lands only on one side of the canal, he will only be entitled to a release to the middle of the abandoned canal, unless the person or persons owning on the opposite side fail to apply within one year after the lands are declared abandoned by the canal board, in which case the board may, in its discretion, sell and convey the entire abandoned canal along the lands of the applicant, to such adjacent owner on the one side thereof.

All conveyances of abandoned canal lands shall be by quit-claim patent, and the fees for such patents, in all cases under the act of 1857, are confirmed, determined, and shall hereafter continue to be, the same as for grants of land under water, that is to say, five dollars for each patent.

*Extract from the minutes of the commissioners of the land office.*

DATED November 14, 1865.

*Resolved*, That hereafter before any application for a conveyance of canal lands under chapter 267, Laws of 1857, be considered by this board, satisfactory proof be furnished that the owners of premises of which such land form a part, have been duly notified of such application.

## TITLE IX.

### OF THE CANALS.

- ARTICLE** 1. Designation and description of canals.
2. Of the canal commissioners and their general powers and duties.
  3. Of the appraisement of damages.
  4. Of the canal board, their powers and duties.
  5. Of water privileges, and the sale of surplus waters.
  6. Of the superintendents of repairs and the collectors of tolls.
  7. Regulations and penalties concerning the navigation of the canals and the collection of tolls.
  8. Regulations and penalties concerning the protection and maintenance of the canals.
  9. Miscellaneous provisions of a general nature.
  - [10.] Of the state engineer and surveyor, division, resident and assistant engineers, and their general powers and duties.



## ARTICLE I.

## DESIGNATION AND DESCRIPTION OF THE CANALS.

## SECTION 210. Names of the canals. Ten in number.

1. The "Erie canal."
  2. The "Champlain canal."
  3. The "Cayuga and Seneca canal."
  4. The "Oswego canal."
  5. The "Crooked Lake canal."
  6. The "Chemung canal."
  7. The "Chenango canal."
  8. The "Black River canal and Erie canal feeder," and the  
"Improvement of Black river, from High Falls to  
Carthage."
  9. The "Genesee Valley canal."
  10. The "Oneida Lake canal," "Oneida Creek feeder," and the  
"Seneca river, from Oneida lake to Baldwin's Mills."
211. The Erie and Champlain canals declared to be completed.
212. Canal board to declare when other canals are completed ;  
powers of commissioners then to cease.
213. Maps of canals to be made.
214. To be compiled by commissioners, and filed in [auditor's]  
office.
215. [Auditor] to send copy to every county intersected by canal,  
to be filed in clerk's office.
216. A transcript from original or certified copy of map to be pre-  
sumptive evidence.
217. Maps of the canals presumptive evidence of title in the state.
218. Provisions of this title to apply to all state canals.

## ENLARGEMENT AND IMPROVEMENT ACTS.

219. The Erie, Oswego, and the Cayuga and Seneca canals, to be  
enlarged.
220. The enlargement of the Erie, the Oswego and the Cayuga and  
Seneca canals, and completion of the Genesee Valley and  
Black River canals, to be finished by 1st of June, 1861 ; di-  
mensions, etc.
221. Bevels of locks to be cut, and bridges raised on the Erie,  
Oswego, and the Cayuga and Seneca canals.
222. Enlargement declared completed from September 1, 1862.
223. Canal board prohibited from changing plans of completed  
canals.
224. Hamburg and Main street basin, Buffalo, to be completed.
225. Canal board authorized to accept Clark and Skinner canal,  
from the city of Buffalo.
226. Improvement of Champlain canal and Glen's Falls feeder.
227. Enlargement of Champlain canal, tax, etc.
228. Dimensions.
229. Maps, plans and estimates, to be submitted to canal board.

## SECTION 230. Prosecution of the work, contracts, etc.

- 231. Enlargement Erie and Oswego canals, for ship canal, whenever the United States shall furnish the funds.
- 232. Enlargement of Champlain canal for ship canal, when the United States shall furnish the funds.
- 223. Dimensions and character of work, how determined.
- 234. Navigation thereof, how regulated.
- 235. Appropriations, how expended.
- 236. No debt to be incurred by the state.

## OF THE CANALS, DESIGNATION AND DESCRIPTION.

- Names of the canals.** § 210. (*R. S.*, § 1.) The navigable communications heretofore constructed, and now in the progress of construction, by the state, shall be known and designated as follows:
- Erie.** 1. The navigable communication connecting the waters of Lake Erie with those of the Hudson river, and all the side cuts, feeders and other works belonging to the state, connected therewith, by the name of the "Erie canal."
  - Champlain.** 2. That connecting the waters of Lake Champlain with those of the Hudson, and the works belonging thereto, by the name of the "Champlain canal."
  - Cayuga and Seneca.** 3. That commencing at Geneva, and terminating near Montezuma, and connecting the waters of the Seneca lake with the Erie canal, and the works belonging thereto, by the name of the "Cayuga and Seneca canal."
  - Oswego.** 4. That commencing at Syracuse, and terminating at Oswego, by the name of the "Oswego canal."
  - Crooked Lake.** [5. (1829, *ch.* 120.) That from Crooked lake, down the outlet thereof, to Seneca lake, by the name of the "Crooked Lake canal."']
  - Chemung.** [6. (1829, *ch.* 135.) That from the head waters of the Seneca lake to the Chemung river (a branch of the Susquehanna) at the village of Elmira, and also a navigable feeder from the summit level to the Chimney Narrows on the Chemung river, in the town of Painted Post, by the name of the "Chemung canal."']
  - Chenango.** [7. (1833, *ch.* 32.) That from Binghamton, in the county of Broome, up the valley of the Chenango river to its head waters, and thence by the most advantageous route to the Erie canal, by the name of the "Chenango canal."']

<sup>1</sup> Ch. 227, of the Laws of 1854, authorized the connection between the Junction canal at Elmira and the Chemung canal under certain regulations and reservations, see § 385, *post*.

<sup>2</sup> Ch. 115, of 1863, directs that "the canal commissioners shall, from time to time, as funds shall be appropriated, extend the Chenango canal

[8. (1836, *ch.* 157.) That from the foot of the high falls, in the Black river, in the county of Lewis, to the Erie canal at Rome, and a navigable feeder from the Black river to the Summit level near the village of Boonville, by the name of the "Black River canal and Erie canal feeder," and the "Improvement of Black river" from High Falls to the village of Carthage, so as to make the same navigable for steamboats drawing four feet of water.]"<sup>1</sup>

Black  
River.

[9. (1836, *ch.* 257.) That from the Erie canal, in the city of Rochester, through the valley of the Genesee river, to a point at or near Mount Morris, and thence to the Allegany river at or near Olean, and a branch commencing at or near Mount Morris, and extending up the valley of the Canaseraga creek, at or near the village of Dansville, by the name of the "Genesee Valley canal."]"<sup>2</sup>

Genesee  
Valley.

[10. (1841, *ch.* 195, § 2.) All the provisions of law in relation to the completed canals of this state, so far as the same may be applicable, are hereby extended to the Oneida Lake canal and feeder, and to the Seneca river from the Oneida lake to Baldwin's mills.]"<sup>3</sup>

Oneida  
Lake  
canal

from its present termination at or near the village of Binghamton, down the Susquehanna Valley, by the most advantageous route, to the state line near Athens, Pennsylvania." With provisions relating to its depth and size, restrictions on expenditures, etc. For further legislation and appropriations on Chenango Valley extension, see Laws 1864, *ch.* 185; 1865, *ch.* 709; 1866, *chs.* 304, 649 and 794; 1868, *chs.* 346 and 715; 1869, *ch.* 877; 1870, *ch.* 767; 1871, *ch.* 930; 1872, *chs.* 583, 700 and 850; 1873, *chs.* 643 and 708.

Ch. 830, of 1872, authorized the commissioner in charge to sell the perishable property belonging to the state on the Chenango extension. As to use of tow-path south of Binghamton for a railroad, see § 401, *post*.

<sup>1</sup> For laws relating to Black River canal and feeder, see "canal commissioners," art. 2 of this chapter, §§ 405 to 413. The act of 1836 permits the passage of the waters of the Black River to the Erie canal, by turning it into Lansing's kill or the Mohawk river.

<sup>2</sup> Ch. 305, of 1846, authorized the canal board to assume in behalf of the state the Dansville slip and basin, and provided that after certain conditions were performed, that the same shall be a part and parcel of the Genesee Valley canal. For appropriation for Loon lake, see 1872, *ch.* 850.

Ch. 247, of 1857, directed the canal commissioners to extend the Genesee Valley canal "from a point near the canal basin at Olean to Mill Grove pond on the Allegany river, a distance of about six miles."

This extension was brought into use and the Genesee Valley canal declared completed by the canal board May 25, 1863.

<sup>3</sup> For legislation relating to Oneida lake, river and canal, Fish and Wood creeks, see Laws 1832, *ch.* 53; 1835, *ch.* 70; 1836, *ch.* 443; 1838, *ch.* 284;

Certain  
canals  
com-  
pleted.

§ 211. (*R. S.*, § 2.) The Erie and Champlain canals are hereby declared to be completed, and all the powers and authority heretofore given by law to the canal commissioners, in relation to the construction of those canals, shall be deemed to have been executed.

Comple-  
tion of  
others,  
how de-  
clared.

§ 212. (*R. S.*, § 3.) Whenever any canal now in the progress of construction, or that shall hereafter be constructed, shall be completed, the canal board shall, by an order, declare the fact of such completion, and from that time all the powers and authority of the canal commissioners, in relation to the construction of such canal, shall cease.

Maps, etc.,  
of canals.  
15 Barb.  
627.

§ 213. (*R. S.*, § 4.) A complete manuscript map and field notes, of every canal that now is, or hereafter shall be completed, and of all the lands belonging to the state adjacent thereto or connected therewith, shall be made, on which the boundaries of every parcel of such lands, to which the state shall have a separate title, shall be designated, and the names of the former owners and the date of each title be entered. The expense thereof shall be paid out of the canal fund. If the canal commissioners, on examination of the premises, be satisfied that the cost and expense of making such map, field notes and survey, will exceed the sum of five thousand dollars, no such map and field notes shall be compiled.

See appen-  
dix, page  
A.

Appor-  
tionment  
and de-  
scription  
of canal  
lands.

Where  
filed.

§ 214. (*R. S.*, § 5.) Every such map shall be compiled by the canal commissioners, who shall, for that purpose, cause all

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1839, ch. 284. The canal to be purchased by the state: 1840, ch. 258; 1841, chs. 195 and 238; 1846, ch. 325; 1847, ch. 261; 1849, ch. 221 and 425; 1851, chs. 308 and 407; 1852, ch. 230; 1853, ch. 64; 1854, ch. 220; 1855, ch. 531; 1856, ch. 165; 1859, ch. 425; 1860, ch. 46; 1862, chs. 74 and 486; 1864, ch. 476; 1867, ch. 934; 1868, ch. 407; 1869, chs. 815 and 913; 1870, ch. 737; 1871, chs. 778 and 930; 1872, chs. 700 and 850; 1873, chs. 643 and 766.

Ch. 934, of 1867, directed the enlargement of the Oneida Lake canal, and authorized a change of line for certain causes, prescribed tolls through the lake, etc. The sixth section is as follows:

“§ 6. A change of the location of said canal, in whole or in part, shall not be deemed or considered as a release or abandonment by the state of the ownership of the Oneida creek feeder, but said feeder shall be maintained and all the waters thereof taken into the Erie canal.”

As to damages growing out of Oneida river improvement, etc., see canal appraisers' report, 1868, p. 7.

By ch. 850, of 1872, a change of plan of completion is permitted, to be determined by the canal commissioner and state engineer.

necessary surveys to be made; when prepared, it shall be submitted to the canal board for its approbation; and when so approved, shall be signed by the canal commissioners, be certified by them as correct, and be filed in the office of the comptroller.<sup>1</sup>

§ 215. (*Modified* 1848, *ch.* 162.) A copy of each map so filed, together with the field books and notes of such survey, or of such part thereof as the canal board shall direct, shall be transmitted by the *comptroller* to every county intersected by the canal to which the map shall relate, and shall be filed in the clerk's office of such county.<sup>1</sup>

§ 216. (*R. S.*, § 7.) A transcript from the original map, or from a copy thereof, certified as correct, by the officer with whom such map or copy shall be filed, shall be received as presumptive evidence, in all judicial and legal proceedings.

Copy to be  
evidence.  
15 Barb.  
627.

§ 217. (1837, *ch.* 451, § 6.) The original maps of the canals of this state, which purport to have been made and completed under and in virtue of the first article of title nine, chapter nine of the first part of the Revised Statutes, which said maps are now filed in the office of the comptroller,<sup>1</sup> and such maps of said canals as hereafter shall be made, completed, approved, signed, certified and filed under and in virtue of the act referred to, are hereby declared to be presumptive evidence that the lands indicated on said maps as belonging to the state, have been taken and appropriated by the state as and for the canals; and a transcript from any such maps, certified as required by the act referred to, shall be of equal effect with the original.

Maps of  
canals,  
evidence  
of title to  
land.

§ 218. (*R. S.*, § 8.) The provisions of this title shall be construed to apply to every canal belonging to the state, of which the construction now is or hereafter shall be authorized by law.

Applica-  
tion of  
this title.

#### ENLARGEMENT, IMPROVEMENT, ETC.

§ 219. (1854, *ch.* 329, § 2.) \* \* \* The Erie, the Oswego, and the Cayuga and Seneca canals, shall be enlarged to the general dimensions of seventy feet in width upon the surface,

Enlarge-  
ments.  
19 Barb.  
263; 7 N.Y.  
9.

<sup>1</sup> Since 1841, *ch.* 218, all maps and papers relating to the canals have been filed in the canal department, and since 1848, *ch.* 162, the duties relating thereto formerly discharged by the comptroller have devolved upon the auditor.

by seven feet in depth, except where, in the opinion of the canal board, greater dimensions may be necessary to supply a sufficient quantity of water for the purpose of navigation and for the construction and completion of such basins as may be deemed necessary, by the canal board, and also, except in localities where a due regard to economy and the interests of the state require that such specified width should, in the opinion of the canal board, be varied.<sup>1</sup>

**Do.**      § 220. (1860, *ch.* 213, § 3; *amended* 1861, *ch.* 332.) The enlargement of the Erie, the Oswego, and the Cayuga and Seneca canals, shall be so far completed in the spring of 1860, before they are opened for navigation, as to give the full depth of seven feet channel and the full width of seventy feet to all the completed portions thereof; and upon any uncompleted portions the full depth of seven feet, and as much width as shall be necessary for loaded boats drawing six feet of water to pass each other, without hindrance or delay; and seven feet depth of water shall thereafter be steadily maintained upon all portions of said canals during the navigable season, and the said canals, and also the Genesee Valley and Black River canals, shall be entirely completed, and the construction accounts thereof fully ended and closed before the first day of June, 1861.

Bevels of  
locks.

§ 221. (*Same ch.*, § 4.) The canal commissioners are authorized and required to cut out the bevels from the bottom of the locks on the Erie, the Oswego, and the Cayuga and Seneca canals whenever it shall be necessary, so as to give a uniform width of eighteen feet, as nearly as may be, upon the mitre sill. Also to raise such of the bridges over said canals as are not now twelve feet from the top of the water when the canal is full, to that height. \* \* \* The expenses incurred under this section shall be paid out of the funds appropriated to the

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<sup>1</sup> The first laws for doubling the locks and commencing the enlargement of the Erie canal were passed in 1834, *ch.* 312, and 1835, *ch.* 274.

Under these laws the canal board decided that the Erie canal should be enlarged to seven feet depth of water and seventy width of surface. That the enlarged locks should be one hundred and ten feet long between the quoin posts and eighteen feet width of chamber. *Vide* report of canal board, assembly document No. 98 of 1836. Also, see 1840, *chs.* 37 and 161; 1841, *ch.* 194; 1842, *ch.* 114; 1844, *ch.* 278; 1846, *ch.* 326.

The enlargement and "revenue certificate" law of 1851 was declared unconstitutional. 3 Barb. 63 and 188; 3 Selden, 9, and was repealed in 1854.

several canals by this act, if not otherwise provided for, and the work shall be done as soon as practicable.

§ 222. (1862, *ch.* 169, § 1.) All contracts for the enlargement and completion of the canals of this state, as contemplated by section three of article seven of the constitution, and not hereinafter provided for, shall be executed and performed in accordance with the plans, maps and specifications heretofore prescribed and adopted on or before the first day of September next after the passage of this act, and the accounts for the said enlargement and completion shall be closed as soon thereafter as may be, and no more work shall thereafter be done, or materials procured, under pretense of enlarging and completing said canals, and the same shall be deemed and considered finished and completed, and from that time all the powers and authority of the contracting board in relation to the enlargement, completion and construction of such canal shall cease.

Enlarge-  
ment de-  
clared  
com-  
pleted.

§ 223. (*Same ch.*, § 2.) After the passage of this act the canal board shall not have power to change the plan of finishing and completing the work of enlarging and completing said canals as heretofore fixed and determined by the resolutions of said board; nor shall the said board have the power to change the plan of construction of a completed canal, its banks, locks, waste-weirs, culverts, bridges, or any other structure or matter or thing connected therewith, except to allow and certify to such works of extraordinary repairs and improvements in a completed canal as is contemplated by the existing statutes of the state.

Canal  
board pro-  
hibited  
from  
changing  
plan of  
complet-  
ing canals.

§ 224. (1840, *ch.* 307, § 1.) The canal commissioners are hereby authorized to complete the "Hamburgh and Main street basin," in the city of Buffalo, agreeable to the plan and estimate of Alfred Barrett, contained in his report to the canal commissioners in compliance with a resolution of the assembly, passed April 19, 1839, provided the corporation of the city of Buffalo and the common council shall, before the commencement of any work therein, cede to the state a full and perfect title to the lands appropriated and necessary for the said basin without cost or charge to the state.<sup>1</sup>

Hamburgh  
and Main  
street  
basin,  
Buffalo.

<sup>1</sup> For legislation relating to Main and Hamburgh street canal, see Laws 1838, ch. 116; 1839, page 372; 1840, ch. 307; 1847, ch. 445; 1848, ch. 213; 1850, ch. 354; 1851, ch. 285; 1870, ch. 650.

NOTE. — By chapter 943 of the Laws of 1871, the legislature authorized

Clark and  
Skinner  
canal,  
Buffalo.

§ 225. (1863, *ch.* 40, § 1.) For the purpose of accomplishing the objects expressed in the resolution of the canal board of the 18th and 19th of April, 1843, so far as the same remain unexecuted in regard to the Clark and Skinner canal or slip, in the city of Buffalo, and of the views of the canal board in relation to the same subject, as expressed in the report of the said board to the assembly, dated September 27, 1847, assembly document No. 205, the canal board is hereby authorized to accept the Clark and Skinner canal or slip as contemplated by the said resolution and report, and the said canal board is hereby further authorized to accept from the city of Buffalo a conveyance and transfer of the said Clark and Skinner canal or slip, to the people of this state, and also any and all other necessary conveyances, releases and acquittances to the people of this state from individuals or corporations, to vest the absolute title and property of the said canal or slip in the people of the state of New York, with the banks, towing-paths, bridges and other structures now being thereon.<sup>1</sup>

Improve-  
ment  
Champlain  
canal and  
Glens  
Falls  
feeder.

§ 226. (1860, *ch.* 213, § 2.) The whole of the tax levied and collected each year under the first section of this act, shall be paid into the treasury of this state to the credit of the canal fund, and shall be and is hereby appropriated as follows:  
\* \* \* To the improvement of the Champlain canal and Glens Falls feeder, in such manner as to give in its entire length a uniform depth of five feet of water, and a uniform width of thirty-five feet on the bottom, as nearly as it can be judiciously done in the opinion of the canal board, and to rebuild the residue of the locks on said canal, as soon as the demands of navigation may require them to be rebuilt, and to

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the canal board "to cut down the state dam at the mouth of Tonawanda creek two feet, and to excavate rock and earth in the canal and Tonawanda creek, between Lockport and Tonawanda, so that there should be no obstruction to canal navigation, if, in their opinion, the same is necessary," and appropriated \$100,000 for said work out of any moneys appropriated, or to be appropriated, for ordinary repairs of the canals.

The canal board held, in October, 1871 (see proceedings, page 201), that it was without power to prosecute the work by reason of the constitutional provision, which prohibits the application of the canal revenues to the construction of new work. See also 1868, *ch.* 880, and *Burbank v. Fay*, 5 Lansing's Reports, 397.

<sup>1</sup> See 1864, *ch.* 469; 1865, *ch.* 675; 1868, *ch.* 715.



stop the leaks in the Glens Falls feeder, the sum of one hundred and seventy thousand dollars.<sup>1</sup>

§ 227. (1870, *ch.* 788, § 1.) There shall be imposed for the fiscal year commencing on the first day of October, eighteen hundred and seventy, in addition to any other tax levy, a tax of twenty-five thousand dollars, and for the fiscal year commencing on the first day of October, eighteen hundred and seventy-one, in addition to any other tax levy, a tax of four hundred thousand dollars on the real and personal property taxable in this state, to be assessed, raised and collected upon and by the annual assessments and collection of taxes for each of said fiscal years, in the manner prescribed by law, to be paid by the county treasurers respectively, into the treasury of this state, to be there received, held and paid for the objects and purposes prescribed in this act.

Enlarge-  
ment of  
Champlain  
canal.

§ 228. (*Same ch.*, § 2.) The whole of the tax levied and collected under the first section of this act shall be paid into the treasury of the state to the credit of the canal fund, and is hereby appropriated and shall be applied as follows: The said sum of four hundred and twenty-five thousand dollars, the proceeds of said tax, shall be applied and expended for and toward the enlargement of the Champlain canal in such manner as to give throughout the entire length of such canal a uniform depth of seven feet of water, and width of forty-four feet on the bottom, and fifty-eight feet at water-surface, except as in the opinion of the canal board may be required for business purposes, when in that case the walls may be made vertical, but retaining the same depth of water and width at water surface, and no part of the said appropriation shall be applied on or for any other object or purpose until the above enlargement shall be made and completed.

Dimen-  
sions.

§ 229. (*Same ch.*, § 3.) The state engineer is hereby authorized and it is made his duty to make or cause to be made the necessary surveys, maps, plans and estimates of such proposed enlargement at the earliest time practicable, and by the first day of October, eighteen hundred and seventy, and under the provisions of chapter four hundred and seventy-seven of the

Surveys

<sup>1</sup> For further legislation for "improvement of Champlain canal," see Laws 1862, ch. 137 and ch. 169, § 6; 1864, ch. 186; 1866, ch. 156; 1868, ch. 715; 869, ch. 877; 1870, chs. 767 and 788.

laws of eighteen hundred and sixty-five, and locate the line of said work. No part or portion of the moneys herein appropriated except to pay the expenses of said surveys, shall be expended or paid, nor shall any contract involving such expenditures and payment be made on behalf of this state until the maps, plans and estimates for such work shall have been submitted to and approved by the canal board, and the work shall be advertised and let to the lowest bidder.

How prosecuted.

§ 230. (*Same ch.*, § 4.) On the revision, approval or adoption by the canal board of the maps, plans and estimates, as provided in section three of this act, the canal commissioners shall, from time to time, advertise and let to the lowest bidder, so much of the said work as may be ordered by the said canal board, and it shall be the duty of the canal commissioners, and they are hereby required, to have all work on the improvement of the Champlain canal authorized by chapter one hundred and eighty-six of the laws of eighteen hundred and sixty-four, and under subsequent appropriations for the same purpose, and now in progress, so constructed as to conform to the dimensions prescribed in section two of this act, and upon the line of enlargement as determined by the canal board, if the contractor or contractors performing such work under contracts that shall be in existence on the first day of October next shall consent to such requirements, or such contractor or contractors may surrender his or their contracts entered into for the performance of said work, or the canal board may by resolution annul the same; and the canal board are hereby authorized to make a final settlement with all the said contractors who may elect to surrender their contracts, or whose contracts may be annulled as aforesaid, as fully as if said contracts had been completed. After said surveys, maps, plans and location of the line of enlargement shall have been approved by the canal board, and the said improvement contracts shall have closed, or a sufficient sum in the judgment of said board shall have been left for the purpose of fulfilling the same, all of the unexpended balance of any moneys appropriated for the improvement of the Champlain canal shall be transferred to the fund provided for in this act for the enlargement of the Champlain canal.<sup>1</sup>

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<sup>1</sup> See canal board proceedings, 1870, pp. 51, 86, 92, 251; 1871, pp. 161, 165 and plans adopted, 190.

§ 231. (1862, *ch.* 415, § 1.)<sup>1</sup> Whenever the government of the United States shall provide the means, either in cash or their six per cent stock or bonds, redeemable within twenty years, for defraying the cost of enlarging a single tier of locks, or building an addition tier in whole or in part upon the Erie and the Oswego canals, including any necessary alteration of said canals, or their structures, to a size sufficient to pass vessels adequate to the defense of northern and northwestern lakes, the canal board shall, without delay, put such work under contract, in the manner now required by law, to be constructed and completed at the earliest practicable period, without serious interruption to navigation, with power, in the discretion of the canal board, to direct the construction of new and independent locks, when found more advantageous. The said canal board shall, whenever the government of the United States shall provide the means as aforesaid, construct a canal of the requisite dimensions and capacity, from the Erie canal, at or near the village of Clyde, to some proper point on the Great Sodus bay or Lake Ontario.

U. S. enlargement of Champlain and Oswego canals for ship canal.

§ 232. (*Same ch.*, § 2.) The canal board are also hereby authorized in like manner to enlarge the Champlain canal, and its locks and other structures, to a size sufficient to pass vessels of like capacity, in case the government of the United States shall, in like manner, provide the means required for that purpose.

U. S. enlargement of Champlain canal for ship canal

§ 233. (*Same ch.*, § 3.) The dimensions and character of all the work hereinabove mentioned, shall be determined by the canal board, subject to the examination and concurrence of the war department of the government of the United States. Contracts for any of said work may be made payable in the said six per cent stock and bonds of the United States, if the commissioners of the canal fund shall so elect.

Dimensions, etc. how determined.

§ 234. (*Same ch.*, § 4.) On completing the said work on either of the said canals, the government of the United States shall have the perpetual right of passage through the canals thus enlarged or built, free from toll or charge, for its vessels of war, boats, gunboats, transports, troops, supplies or muni-

Navigational tows, etc.

<sup>1</sup> "An act to adapt the canals of this state to the defense of the northern and northwestern lakes," passed April 22, 1862, *ch.* 415.

tions of war, subject to the general regulations prescribed by the state from time to time, for the navigation of its canals.

Appropriations.

§ 235. (*Same ch.*, § 5.) Any moneys or other means which may be received from the government of the United States, to pay for any of said work, are hereby appropriated to be expended for the purposes hereinabove mentioned.

No state debt to be made.

§ 236. (*Same ch.*, § 6.) But nothing in this act contained shall authorize the contracting or incurring of any debt or liability, directly or indirectly, on the part of the state, or the expenditure of any means or money of the state of New York for the purposes specified in this act.<sup>1</sup>

## ARTICLE II.

### OF THE CANAL COMMISSIONERS AND THEIR GENERAL POWERS AND DUTIES.

#### SECTION 250. Election of commissioners, and terms of office.

251. General powers and duties.

252. Commissioners to give bond.

253. When to be renewed.

254. Compensation and mileage.

255. Choice of president and secretary.

256. Of calling board together.

257. Majority of board to do business.

258. Board may employ agents, compensation.

259. Commissioners to have power to make feeders, etc., for proper construction of canals authorized by law, and to take possession of all necessary lands, etc.

260. Extraordinary repairs, how made.

261. Such repairs to be completed as soon as practicable; necessary lands, etc., may be taken possession of.

262. Public roads may be altered or discontinued when necessary.

263. Description of road altered or discontinued, to be drawn up and filed in town clerk's office.

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<sup>1</sup> See concurrent resolution 1859, p. 1205, relative to the harbor in Buffalo, and harbors on the chain of lakes.

For legislation relative to particular portions of the canals of the state, see art. 2 of this chapter, "*Of the canal commissioners.*"

1863, p. 906, concurrent resolution asks for survey for enlarging locks, etc.

1865, ch. 472, and 1866, ch. 33, provided for a survey of the Hudson river, from Waterford to Fort Edward. See report, senate documents, 1867, Vol. 2, No. 37.

See concurrent resolution of May, 1873, appointing committee to confer with committee of U. S. Congress on inland communication and cheap transportation.

- SECTION 264.** Passage of road discontinued, etc., not to be obstructed till new road passable.
265. Alterations heretofore made to be deemed valid.
266. Power as to railroads passing over or within ten rods of canal.
267. Grade of railroads crossing canal or feeder may be changed; damages.
268. When navigation interrupted, injury causing it to be immediately repaired, and may cut up or destroy, if necessary, any boat or vessel.
269. Deficiency of water to be supplied without delay.
270. Damages to be paid for temporary use of lands and waters.
271. To erect and keep toll-houses, etc., in repair.
272. Canal board to make regulations concerning the navigation of the canals.
273. Regulations to be printed and distributed.
274. Regulations, how authenticated.
275. A portion of the canals to be assigned to each commissioner.
276. Powers and duties unimpaired by repeal of repair contract system; divisions, how changed.
277. General powers and duties.
278. To visit line of canal, engineer may perform this duty in certain cases.
279. To take duplicate receipts for moneys paid.
280. Purchases to be made for cash, each voucher to be filled up at the time it is taken, with proof thereof if necessary; auditor to prescribe rules and forms.
281. To remove obstructions from canal lands.
282. Canal officers may require affidavits and administer oaths.

#### CLAIMS AND APPEALS.

283. To attend before the canal appraisers in person or by agent, and procure attendance of witnesses.
284. Auditor to act when commissioner disqualified.
285. Appeals from decisions of appraisers to be to the canal board.
286. Such appeals shall be made in writing; notices of, how served
287. Canal appraisers to file transcript of decision in clerk's office; appeals must be made within three months.
288. Appeals may be taken from decisions of appraisers under special acts.
289. Shall be taken within three months.
290. Notices of appeal may be signed by one commissioner.

#### CONTRACTS.

291. Contracts to be made for work or materials.
292. Division engineers to make maps, surveys, plans, etc.
293. Division engineers to make estimates of quantities, etc., before lettings are made.
294. Contracts for construction, repairs and improvements to be made in writing.
295. Copies of contracts, how deposited.
296. Publication of proposals for contracts.
297. Proposals to be definite and certain.

- SECTION 298. No more than one proposition to be received from any one person for same contract.
299. May require deposits from contractors; how disposed of, may prescribe regulations for lettings, etc.
300. Contracts shall provide for the payment of all damages caused by the negligence of contractors.
301. Security to be given by contractor; penalty for violation of contract.
302. Contractors to give bonds for the payment of laborers, where filed.
303. Suits on the bond may be commenced before a justice.
304. Several and successive suits may be brought thereon; must be brought within thirty days after completion of labor.
305. Alterations not to be made in contracts except in writing and by the canal commissioners.
306. Not to make extra allowances to contractors.
307. Materials procured under contract exempt from execution.
308. Contractors, how paid.
309. Money not to be paid to contractors except on engineers' certificate and oath.
310. Engineers' certificate to accompany contractor's receipt.
311. Engineers to keep a book of measurements, etc.
312. Auditor to refuse payment of drafts, unless accompanied by certificates, sworn to and verified.
313. Commissioner may certify to final estimates.

## ENGINEERS.

314. Drafts for expenses of engineers' department. Advances not to exceed five thousand dollars at any one time.
315. Engineer to execute and file bond, before advances are made.
316. Engineers must account once in ninety days.
317. Engineers' accounts before allowance must be certified to by a commissioner.

## ACCOUNTS AND REPORTS.

318. Damages and penalties recovered by commissioners to be paid into the treasury.
319. Commissioners, etc., in any civil suit, cannot be held to bail, or taken by warrant for any official act.
320. Work on enlargement to be kept distinct from repairs.
321. No commissioner to have in his hands more than ten thousand dollars at any one time.
322. Commissioners to account to auditor, and when; auditor to report same to legislature.
323. When commissioners to make their report; its contents.
324. Time of completion of report.

## SUPERINTENDENTS.

325. Superintendents to make detailed estimates of anticipated objects of expenditure.
326. To be certified to by commissioner; auditor to make advances
327. Commissioner to certify to such amount as he may deem necessary for each work or object.

- SECTION 328.** Manner of purchasing tools, etc., for canal repairs, under ch. 278, of 1847.
- 329. Proposals for furnishing.
  - 330. Contractors to give security for performance of contracts.
  - 331. Penalty for neglect to perform their contracts.
  - 332. Purchase of tools, etc., in event of a breach or other emergency.
  - 333. Tools furnished by contractor to be examined by a commissioner.
  - 334. Contracts to provide for an equitable and speedy adjustment of questions.
  - 335. Payments for tools, etc., purchased on contracts.
  - 336. Commissioners may direct the purchase of tools without advertising for proposals if they deem it expedient.
  - 337. Contracts for materials and work, how and where filed.
  - 338. Superintendents not to contract for tools, materials, etc., except upon certificate of commissioner. Penalty for expending moneys, except for the purposes specified in detailed estimates.
  - 339. Compensation to be paid by superintendents for labor to be fixed by the board of canal commissioners.
  - 340. Eight hours to constitute a legal day's work.
  - 341. To whom the act applies.
  - 342. Penalties for violation of by officers of the state.
  - 343. Penalties for violation of by contractors.

## ALBANY BASIN.

- 344. Albany basin loan.
- 345. To be paid to the city of Albany and for what purpose.
- 346. Provision for payment of tolls to pier owners repealed.
- 347. Act of 1849, chapter 200, to be a final settlement.
- 348. Basin tolls to be computed as for one mile in length.
- 349. To be improved as per map in state engineer's report for 1865.
- 350. New line of docks on west side.
- 351. Damages to bridges to be paid by city.
- 352. Opening in pier at foot of Maiden lane may be contracted. Lands regained, how disposed of.
- 353. Opening to be made in pier between railroad and Columbia street bridges.
- 354. Damages for such opening to be paid by the city of Albany. Bond to be given.
- 355. Appropriation for opening. Navigation of basin to be maintained to the depth of mitre-sill of lock No. 1.
- 356. Wharfage in the harbor of Albany. Not to apply to canal boats unless receiving or discharging cargoes.
- 357. Certain work to be done on the opinion of the attorney-general.
- 358. The work not to be deemed a recognition of the liability of the state. Liability of the city of Albany. Consent of the city and pier company necessary.
- 359. Certificate to be filed of the necessity of the work.

**SECTION 360.** Actions against the city of Albany for damages caused by the freshet of January, 1869. Proceedings, provisions, liabilities, etc.

**ONONDAGA SALT SPRINGS.**

- 361. Superintendent of, to estimate, commissioner to supply, water for pumps for raising salt-water, not impeding navigation. Damages for water taken from Nine mile creek, how paid.
- 362. State engineers to make surveys and estimates, and assume charge of work.
- 363. Water used for pumping may be resumed by commissioner.

**FISH-WAYS.**

- 364. Fish-ways to be constructed in certain dams.

**ERIE CANAL.**

- 365. Enlargement of locks. Cost of old plan to be paid from ordinary repairs, balance from appropriations for new work.
- 366. Enlargement of structures, same rule applied.

**CAYUGA INLET.**

- 367. Canal commissioners to take charge of a portion of Cayuga inlet.
- 368. Money to be expended not to exceed tolls collected.

**CAYUGA AND SENECA CANAL.**

- 369. For the improvement of the navigation of the Cayuga and Seneca canal by lowering the upper or Seneca lake level, etc.
- 370. To excavate the Cayuga and Seneca canal and Seneca river, etc., at or near Waterloo.
- 371. Commissioners to cause monuments to be erected in Seneca lake to determine point at which water may be discharged.
- 372. Waterloo dam to be raised to height of the original state dam.
- 373. No damages therefor to be allowed.
- 374. Dam at Waterloo, how to be constructed in 1873.

**BALDWINSVILLE DAM.**

- 375. Navigation of Seneca river to be extended at Baldwinsville.
- 376. Commissioners to erect permanent monuments to designate the height of Baldwinsville dam, descriptions to be filed in town clerk's office. The said dam shall not be raised higher than designated by monuments, penalty.
- 377. Commissioner may permit person or persons to raise said dam by flush-boards, not to exceed height designated by monuments. State not to be liable for any damages therefor.
- 378. Commissioners to maintain said dam. May allow surplus waters to be used for hydraulic purposes.



SECTION 379. Baldwinsville canal subject to canal laws.

380. Baldwinsville dam to be rebuilt of stone.

#### OSWEGO CANAL.

381. Dams on Oswego river to be rebuilt of stone.

#### CROOKED LAKE CANAL.

382. Commissioners to rebuild locks when necessary for navigation.

#### CHEMUNG CANAL.

383. Locks to be rebuilt on enlarged plan.

384. Cost of old plan paid from ordinary, excess from extraordinary repair fund.

385. Connection of Chemung and Junction canals.

386. Damages to be paid by company.

387. Powers of company.

388. Rights of state reserved.

389. Elmira may use portion of canal for street.

390. Structures to be removed.

391. To be a public highway except as against the state.

392. Utica, Ithaca and Elmira Railroad may build draw-bridge over Chemung canal.

393. May use portion of canal in Elmira under direction of commissioner.

394. May acquire rights of city under ch. 785, of 1872.

#### CHENANGO CANAL.

395. Utica asylum may use water of fifth lock for pumping.

396. May take water and ice from fifth to tenth lock. Commissioner to regulate, etc.

397. Duty of commissioner to supply water and ice to the asylum.

398. Binghamton may use a portion of canal for a public street.

399. Bulk-head to be built by city, if necessary.

400. Street a public highway except as to the state.

401. Binghamton, Dushore and Williamsport Railroad company may lay a track on tow-path of canal south of Susquehanna river, by consent of canal board.

402. When rights of railroad may cease.

403. Notice of removal penalty, etc.

404. This act not to prevent the state from selling the canal.

#### BLACK RIVER CANAL, FEEDERS, RESERVOIRS, ETC.

405. Survey directed for survey of Black river, etc., for reservoirs.

406. To construct dams, etc., on Black, Moose or Beaver rivers.

407. Structures to be made part of the public works.

408. To appoint keepers, prescribe regulations, etc.

409. Penalties for interfering with or damaging gates, dams or structures.

410. Laws relating to public works to apply thereto.

411. Section No. 2 to include reservoirs, dams, etc.

SECTION 412. Appropriation to restore to Black river 11,000 feet of water per minute.

413. Appropriation for construction of dam across Moose river.

#### GENESEE VALLEY CANAL.

414. To raise Oil creek reservoir and Ischua creek dam.

415. Monuments to be erected and their location to be reported.

#### ONEIDA LAKE CANAL, RIVER, ETC.

416. Locks to be rebuilt on the enlarged plan.

417. Oak Orchard draw-bridge to be maintained and operated by the state.

418. Appropriation, conditions, change of plan, etc.

#### OF THE CANAL COMMISSIONERS, THEIR POWERS AND DUTIES.

Election  
of com-  
missioners

§ 250. (*Const., Art. V, § 3.*) Three canal commissioners shall be chosen at the general election which shall be held next after the adoption of this constitution, one of whom shall hold his office for one year, one for two years, and one for three years. The commissioners of the canal fund shall meet at the capitol on the first Monday of January, next after such election, and determine by lot which of said commissioners shall hold his office for one year, which for two years, and which for three years; and there shall be elected annually, thereafter, one canal commissioner, who shall hold his office for three years.

Powers  
and duties  
19 Barb.  
657; 20  
Barb. 620.

§ 251. (*R. S., § 9, modified by Art. V, Const. 1846.*) The general care and superintendence of the canals shall continue to be vested in the board of canal commissioners.<sup>1</sup> \* \* \*

<sup>1</sup> Ch. 237, Laws of 1816, appointed five canal commissioners. Another was appointed by the legislature in 1821, under ch. 36.

1 Rev. Stat. (1828), ch. 5, title 1, § 1, provided for "four canal commissioners, two of whom shall be acting commissioners." 1 R. S., ch. 9, title 9, art. 2, § 9, printed above (§ 251), contained a similar clause relating to acting commissioners. An additional canal commissioner was authorized by ch. 80, in 1833, and another by ch. 451, in 1836. The number was reduced to four by ch. 280, of 1844, with a provision for not exceeding three acting commissioners."

Ch. 6, of 1845, amendatory thereof, provided that "the persons elected canal commissioners shall designate how many of their number, not less than two, nor more than three, shall be acting canal commissioners."

The constitution of 1846 (§ 250) *ante*, provides that "Three canal commissioners shall be chosen," etc. The term "*acting* canal commissioner" has been seldom used in the statutes passed since the adoption of the constitution, in November, 1846. The only cases found, in compiling this manual, are: 1847, ch. 278, § 14; 1859, ch. 457, and 1867, ch. 564, the two latter

§ 252. (*R. S.*, § 10, *amended* 1848, *ch.* 162.) Each acting canal commissioner, before he shall enter on the duties of his office, shall execute a bond to the people of this state, in a penalty of twenty thousand dollars, with two substantial freeholders as sureties, conditioned for the faithful discharge of the duties of his office, and for the faithful accounting for all monies intrusted to him as such commissioner, whenever and as often as he shall be so required by law, by a concurrent resolution of the senate and assembly, or by the [auditor]; such bond shall be approved of by the [auditor], and filed in his office.

Bond of  
acting  
commis-  
sioners.

§ 253. (*R. S.*, § 11, *amended* 1848, *ch.* 162.) Every such bond heretofore given, or shall hereafter be given, shall be renewed from time to time with new or additional sureties, whenever such renewal shall be demanded by the [auditor] or the commissioners of the canal fund; and the refusal of any commissioner to renew his bond when so required, shall be deemed a breach of its condition.

When re-  
newed.

§ 254. (1854, *ch.* 332, § 3; *amended* 1873, *ch.* 760, § 2.) The canal commissioners hereafter to be elected shall be entitled to compensation for their services at the rate of two thousand dollars a year, payable quarterly, instead of all compensation now allowed by law; and there shall be paid to each of the canal commissioners, in full for all traveling expenses incurred by them in the discharge of their official duties, the sum of eight hundred dollars per annum, payable quarterly by the auditor of the canal department. All acts and parts of acts conflicting with or inconsistent with this provision are hereby repealed.<sup>1</sup>

Compensation and  
traveling  
expenses.

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amending a law of April, 1846, in which the phrase was used. See § 396, *post*. In these acts the term is used in the sense of the commissioner in charge, and not by way of distinction from non-acting commissioners. Chs. 499, of 1847, and 332, of 1854, relating to commissioners' salaries, etc., make no allusion to "acting" commissioners.

For these reasons, it is assumed that the constitutional provision for "three canal commissioners," modifies *R. S.*, § 9, in this respect, and the latter clause of the section, relating to the number of acting commissioners (as amended by ch. 6, of 1845), is therefore omitted.

As to vacancies in office and appointment of canal commissioners, under *Laws* of 1847, ch. 360, see § 37, *ante*.

<sup>1</sup> This section of ch. 332, of 1854, provided for four hundred dollars for traveling expenses, and repealed all former laws allowing traveling fees and expenses.

**Officers of board.** § 255. (*R. S.*, § 12.) The board shall annually choose one of their number to be their president, and another from time to time as their secretary, who shall keep and preserve regular minutes of all their proceedings.

**Meetings, how called.** § 256. (*R. S.*, § 13.) It shall be the duty of the president to call a meeting of the board, on the request in writing of a commissioner, and without such request, whenever he shall deem it expedient.

**Quorum.** § 257. (*R. S.*, § 14.) A majority of the board shall be a quorum for the transaction of business, and may adjourn from time to time, and fix the time and place of future meetings.

**Powers of commissioners, agents, etc.** § 258. (*R. S.*, § 15; *modified* 1848, *ch.* 72; 1850, *ch.* 377.) The board may employ such and so many agents, \* \* \* draftsmen, surveyors and other persons, as they may judge necessary, to enable them to discharge their duties as commissioners, and shall pay such compensation as they shall judge reasonable, to each person so employed.<sup>1</sup>

**Powers of commissioners, feeders, etc.** § 259. (*R. S.*, § 16.) In the construction of every canal of which the construction is or shall be authorized by law, the canal commissioners shall have power, and it shall be their duty, to make all such canals, feeders, locks, dams, aqueducts, and other works, as they shall deem the proper construction of such canal to require; and they shall enter on, and take possession of, and use, all lands, streams and waters, the appropriation of which, for the use of such canals and works, shall, in their judgment, be necessary.

**Ib. Extraordinary repairs.** § 260. (*R. S.*, § 17.) Whenever, in the opinion of the canal commissioners, it shall become necessary or expedient to make any extraordinary repairs or improvements on any completed canal, such as the opening of new feeders or the construction of additional locks, dams, embankments, tunnels or aqueducts, it shall be their duty to cause the necessary surveys and levels to be taken, and accurate drafts, plans and models, or maps, as the case may require, of the contemplated works, together with an estimate, in minute detail, of the probable

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<sup>1</sup> The word "engineers" omitted, as their appointment and employment is provided for by the acts referred to above, and by ch. 477 of 1865.

expense to be incurred, and to submit the same to the canal board for their approbation.

§ 261. (*R. S.*, § 18.) If such extraordinary repairs or improvements shall be directed by the board or the legislature, it shall be the duty of the commissioners to proceed, as soon as circumstances will permit, to execute and complete the same; and for that purpose, by themselves or their agents, to take possession of, and use, all lands, waters or streams of which the occupation and use, in their judgment, may be necessary to enable them to discharge such duties.<sup>1</sup>

To take  
lands, etc.  
1 Wend.  
470;  
26 Wend.  
485.

§ 262. (*R. S.*, § 19.) Whenever, for the purpose of constructing a canal, or making any extraordinary repairs or improvements, it shall be deemed necessary by the canal commissioner having charge of the work, to discontinue or alter any part of a public road, on account of its interference with the proper location or construction of such work, he shall make, or direct to be made, such discontinuance or alteration.

Altering  
roads, etc.  
31 N. Y. 151.

§ 263. (*R. S.*, § 20.) It shall be his duty to draw up in writing and figures, a true description of all such parts of a public road as shall be so discontinued and new laid, and to file such description in the town clerk's office of the town in which such parts may be situate, and from the time of such filing, such discontinuance and alterations shall be valid in law.

Proceed-  
ings.

§ 264. (*R. S.*, § 21.) The canal commissioners shall not, however, obstruct the passage of any part of a public road, so discontinued or altered, until they shall have opened and worked, so as to render passable, such part of such road as shall have been new laid by their engineer; and the certificate in writing of any justice of the peace in the county where

Restrio-  
tions.

<sup>1</sup> The appropriation of land for a canal by the authorized agents of the state confers a right to enter upon and use the soil, although the absolute fee does not vest in the state till the appraisement of damages.

No formal resolution of the canal commissioners is necessary to warrant such appropriation; an entry upon the land, laying out and commencing the work will be sufficient. 15 Wend. 569. Where a statute authorizes the taking of "lands" for public use, e. g. a canal, the stone in the earth, and every thing else included in the general definition of the term *land* may be taken. *Baker v. Johnson*, 2 Hill, 342; 11 N. Y. 308; affirming, 15 Barb. 627; *contra*, 11 Barb. 26.

such road shall be situated, that the part so new laid has been so opened and worked, shall be their sufficient justification.

Former alterations.

§ 265. (*R. S.*, § 22.) Every alteration heretofore made by any engineer, in any public road on either of the canals, shall, from the time of such alteration, be deemed valid in law.

Powers as to railroads crossing canals.

§ 266. (1834, *ch.* 276, § 17.) 'The canal commissioners are hereby invested with a general and supervisory power over so much of any railroad as passes over any canal or feeder belonging to this state, or approaches within ten rods of such canal or feeder, so far as such power may be necessary to preserve the free and perfect use of the canals or feeders of this state, and necessary for making any repairs, improvements or alterations in the same; and said company shall not construct their railroad over, or at any place within ten rods of any canal or feeder belonging to this state, unless said company shall lay before the commissioners aforesaid, a map, plan and profile, as well of the canal or feeder as of the route designated for their railroad, exhibiting distinctly and accurately the relation of each to the other, at all the places within the limits of ten rods as aforesaid; and shall thereupon obtain the written permission of said canal commissioners, with such conditions, instructions and limitations, as, in the judgment of said canal commissioners, the free and perfect use of any such canal or feeder may require.'<sup>2</sup>

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<sup>1</sup> "An act to incorporate the Medina and Darien Railroad Company."

<sup>2</sup> Railroad swing or draw-bridges over the canals have been authorized in the following cases:

At Utica, in 1871, over the Erie canal, one by *ch.* 350, and another by *ch.* 603. As to use of Genesee street bridge by horse railroad, see canal board proceedings, 1868, p. 66.

At Syracuse, over the Erie and Oswego canals. In 1871, by *ch.* 353; amended 1872, *ch.* 282, and 1873, *ch.* 99.

At Palmyra, in 1873, by *ch.* 284.

At Lyons, in 1873, by *ch.* 445.

All these bridges are placed under the control and direction of the canal commissioner in charge, and are to be maintained and operated at the expense of the railroad companies. The last three named contain the following provision: "§ 2. Any damage arising to boats, or to the commerce of the canals, by reason of the negligence of the railroad company or its agents, in the management and control of said bridge or pier, shall be paid by the said railroad company, and shall not become a charge against the state."

Railroad draw-bridges over the Chemung canal are authorized by *ch.* 834 of 1873. See § 392, *post*.

§ 267. (1855, *ch.* 478.) Whenever the grade of any railroad shall be changed under the direction of the canal commissioners, at any point where such road crosses or shall cross any canal, or canal feeder, except in the city of Buffalo, it shall be lawful for the directors of the company owning such railroad, to alter the grade of such road on each or either side of the place where such change shall have been so made by order of the canal commissioners, for such distance and in such manner as the said directors may deem necessary. And the directors of any railroad company shall also be authorized at any time to change the grade of any part of their road, except in the city of Buffalo, in such manner as they may deem necessary to avoid accidents and to facilitate the use of such road; and any and all damages arising from such alteration, to be appraised in same manner as provided in the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," and in the several acts amendatory thereof.

Grade of  
railroads.

§ 268. (*R. S.*, § 23, *amended* 1870, *ch.* 222.) Whenever the navigation of any of the canals shall be interrupted or endangered, it shall be the duty of the commissioners, without delay, to repair the injury causing or threatening such interruption, and for that purpose, they shall have power, by themselves or their agents, to enter upon and use any contiguous lands, and to procure therefrom all such materials as in their judgment may be necessary or proper to be used in making such repairs. And whenever the navigation of any of the canals shall be interrupted or endangered, any commissioner or superintendent may, if in his judgment it is necessary or proper so to do, cut up, destroy or remove any canal boat, vessel or other thing in or partly in the canal, and the damages in consequence thereof shall be assessed in the manner provided by chapter two hundred and eighty-seven of the laws of eighteen hundred and thirty-six.<sup>1</sup>

To repair  
injuries to  
canals. 20  
Barb.  
620; 42 N  
Y. 47.

§ 269. (1833, *ch.* 169, § 1.) Whenever the navigation of the canals shall be interrupted or endangered by reason of a

Deficiency  
in water,  
how sup-  
plied.

As to railroad track on tow-path Chenango canal, see 1873, *ch.* 835, and post, § 401, etc.

For report and resolution of canal board, on use of canal bridge at Port Schuyler, West Troy, by Watervliet Turnpike Company and Horse Railroad, see proceedings June 25, 1863.

<sup>1</sup> Before this amendment officers were held liable, see 1871, p. 1567, where the state assumed and paid the damages.

deficiency of water, it shall be the duty of the canal commissioners, without delay, to supply such deficiency ; and for that purpose they shall, by themselves or their agents, resume the temporary use of all the surplus waters which shall have been leased upon the level of the canal where such deficiency exists ; and in such case if there shall still be a deficiency of water, then they shall have power to enter upon and use all lands, streams and waters, which in their judgment may be necessary or proper to be used, to procure a temporary supply of water for such canals.<sup>1</sup>

Tempor-  
ary dam-  
ages for  
lands and  
water.

§ 270. (*Same ch.*, § 2.) When damages shall be claimed by the owner of any lands, streams or waters, which shall have been used for temporary purposes under the authority given in the preceding section, such damages shall be agreed upon, or appraised and paid, in the same manner as is provided for the agreement or appraisal and payment of damages, in cases where land shall have been occupied for temporary purposes, or from which materials shall have been obtained for repairs ; but no damages shall in any case be allowed for resuming the use of any surplus waters of the canals leased to any individuals.

Repair of  
toll-  
houses,  
etc.

§ 271. (*R. S.*, § 24.) It shall be the duty of the canal commissioners, to keep in complete repair, all toll-houses, weighing scales, offices and other edifices, already built or purchased, for the use of the canals ; and at such times and places as the canal board may direct, to erect such further toll-houses, weighing scales, offices and other edifices, and purchase such ground for the convenience thereof, as may be deemed necessary for the profitable use of the canals.

Canal  
board to  
make  
regula-  
tions.

§ 272. (*R. S.*, § 25 ; *amended* 1835, *ch.* 21.) [The canal board] shall, from time to time, make such rules and regulations, not inconsistent with the laws of the state, in respect to the size and structure of boats, rafts and other floats, on the waters of the canals, and the weighing and inspecting of boats and their lading, and in respect to all matters connected with the navigation thereof, and impose such forfeitures of money for the breach of such rules and regulations, as they may judge

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<sup>1</sup> 4 Denio, 356 ; 11 Barb. 387 ; 19 Barb. 657 ; 13 N. Y. 238, 244.



reasonable; but no forfeiture so imposed, shall, for a single offense, exceed the sum of twenty-five dollars.<sup>1</sup>

§ 273. (*R. S.*, § 26.) They shall cause a sufficient number of copies of all such rules and regulations, including the forfeitures for the breach thereof, to be printed, and shall distribute the same to the superintendents of repairs, the collectors of tolls, and lock-keepers, to be kept in their respective offices for public inspection.<sup>1</sup> Notices of.

§ 274. (*R. S.*, § 27; *modified* 1848, *ch.* 162.) All rules, regulations and forfeitures, established by them in relation to the management and navigation of the canals, shall be filed in the [canal department], and a copy thereof, certified by the [auditor] under his hand and the seal of his office, shall be received in all courts of law, as due proof that such rules, regulations and forfeitures were by them established. How authenticated.

§ 275. (*R. S.*, § 28.) The board shall, from time to time, assign to each acting commissioner, in special charge, the line or portion of the line, of one or more of the canals. Special charge of canals. 13 Barb. 86; 20 Barb. 620; 7 N. Y. 9.

§ 276. (1870, *ch.* 55, § 7.) \* \* \* Nothing in this act<sup>2</sup> shall impair or detract from the power and duties of the canal commissioners in the performance of their duties; but they shall, upon their respective divisions, which divisions shall not be changed or altered except with the consent and approval of the canal board, perform the duties and exercise the powers conferred upon them by law. Divisions how changed.

§ 277. (*R. S.*, § 9.) It shall be the duty of each acting commissioner, Duty of acting commissioners.

<sup>1</sup> Ch. 21, Laws of 1835, provides as follows:

"§ 1. All such rules and regulations in relation to the canals, as are now authorized by sections twenty-five (*printed above* § 272), one hundred and forty-eight, one hundred and forty-nine (*relating to commutation of tolls upon passengers*) and one hundred and eighty-eight (*relating to the prosecution for penalties*) of title nine of chapter nine of the first part of the Revised Statutes, to be made by the canal commissioners, or the commissioners of the canal fund, may hereafter be made by the canal board, with the like penalties and forfeitures as are now provided in said title."

See, also, *ch.* 55, Laws of 1870, sections 6 and 7, §§ 533 and 534, *post*.

<sup>2</sup> "An act to abolish the contracting board and the system of repairing the canals by contract," passed March 10, 1870. See §§ 528-534 and note 1, § 170.

26 Wend. 485; 4 Denio, 356; 2 Johns. 735; 11 Barb. 382.

1. To examine frequently and carefully into the state of the canals and works, committed to his charge.

2. To direct and cause to be made, such ordinary repairs, as he shall perceive to be necessary.

3. To superintend and cause to be made, such extraordinary repairs or improvements, as shall be ordered.

4. To make, by himself or a superintendent of repairs, all necessary contracts for the supply of materials and the performance of labor.

5. To inquire into the official conduct of all superintendents of repairs, collectors of tolls, lock-keepers and other subordinate agents, and to receive and hear all complaints that may be preferred against them.

And generally to enforce the faithful execution, by all persons concerned, of the provisions of this title.

Commissioners to visit line of canal.

§ 278. (1847, *ch.* 278, § 14; amended 1854, *ch.* 332, § 3.) It shall be the duty of each acting canal commissioner, at least once in thirty days during the season of canal navigation, to visit and examine every part of the line of canal assigned to his special charge, and as often as three times in each season to give public notice of such visitation, and that he will attend to such complaints as may be made under the fifth subdivision, section twenty-nine, article two, title nine of chapter nine of the first part of the Revised Statutes. \* \* \* And if, from sickness or any other cause the acting commissioner on any division cannot or does not attend to this duty, the service shall be performed by the state engineer and surveyor or the chief engineer at the same rate of compensation.

Engineer may perform duties of.

To take receipts.

§ 279. (*R. S.*, § 30.) It shall be the duty of each acting commissioner, to take duplicate receipts for all moneys advanced or paid by him.

Purchases to be made for cash.

§ 280. (1842, *ch.* 310, § 1; amended 1855, *ch.* 535, § 3.) All purchases for the use of any department, office, or work of the government, shall be for cash and not on credit or time. Each voucher, whether for a purchase or for a service, or other charge, shall be filled up at the time it is taken; and in all cases where the payment is not made directly by the treasurer or governor, proof in some apt form shall be furnished on oath, that it was so filled up at the time it was taken, and that the money mentioned therein to have been paid, was in fact paid

in cash or by draft on some specified bank. The auditor, in all cases when moneys are paid from the canal revenues, loans or fund, and the comptroller, in all cases where payments are made from any other revenue or fund, shall from time to time prescribe rules, regulations and forms to secure the faithful observance of this section, and may in all cases, if they shall deem it necessary, require proof on oath of the payment of the money as aforesaid.<sup>1</sup>

Auditor may prescribe rules.

§ 281. (1866, *ch. 657*, § 1.) The act entitled "An act for the protection of canal and other lands belonging to the state of New York," passed May 12, 1865, is hereby amended to read as follows: The canal commissioners are hereby authorized and required to remove or cause to be removed from the land taken by the state for canal purposes, except those parts thereof that lie in the thickly built parts of cities, all encroachments thereon, whether in the shape of buildings, fences or other structures, except dry docks authorized by the canal commissioners, or manufactories, mills or warehouses doing business upon the canal, that said lands may be kept in the possession of the state for the purposes of canal navigation.<sup>1</sup>

To remove obstructions from canal lands.

§ 282. (*R. S., Part III, ch. VIII, Title 17*, § 11.) Whenever application shall be made to the commissioners of the land office, the canal board, canal commissioners, or any of them, or to any other public officer, to do any act in an official capacity, and such board or officer shall require information or proof to enable them or him to decide on the propriety of doing such act, such information or proof may be required to be given by affidavit, and any member of such board or such officer, may administer all necessary oaths for that purpose.

Public officers may require affidavits and administer oaths.

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<sup>1</sup> This section has been heretofore printed in Title 2 of this chapter. "Of the canal fund," etc., as § 150. For the convenience of those using this Manual, some sections of general importance like this, or those prescribing the duties of several officers in the same section, will be found inserted twice, and in a few cases three times, under different titles or articles.

<sup>1</sup> The act of 1865, *ch. 727*, was as follows:

"§ 1. The canal commissioners are authorized and required to remove, or cause to be removed, from the land taken by the state for canal purposes (except those parts thereof that lie in the thickly built parts of cities and villages), all encroachments thereon, whether in the shape of buildings, fences, or other structures; that said lands may be kept in the possession of the state for the purposes of canal navigation."

## OF CLAIMS AND APPEALS.

To attend  
before the  
appraisers  
in person  
or by agent  
and procure  
attendance  
of witnesses.

§ 283. (1836, *ch.* 287, § 5; *amended* 1855, *ch.* 535, § 4.) It shall be the duty of one of the acting canal commissioners, in person or by agent, to attend in behalf of the state, before the canal appraisers, and procure or request the attendance and examination of witnesses on the part of the state, and if, in the opinion of the canal appraisers, the interests of the state require it, they may employ counsel on behalf of the state, on the hearing of claims for damages before them.<sup>1</sup>

Auditor to  
act in  
place of  
commissioners  
when disqualified.

§ 284. (1859, *ch.* 376.) Whenever, from interest, or having been counsel for any claimant of damages against the state, in the matter of such claim, or being related to such claimant, any canal commissioner shall be disqualified from acting in any case where by law any power or duty is imposed upon such commissioner, or the board of canal commissioners, on filing in the office of the auditor of the canal department, the certificate of such commissioner, stating his disqualification, the said auditor is authorized, and it shall be his duty to act in the place of such disqualified commissioner, in the matter of such claim.

Appeal to  
canal  
board.

§ 285. (1829, *ch.* 368, § 3.) Every person having exhibited a claim for damages to the appraisers, or the canal commissioners, where they shall deem the interest of the state to require it, may enter an appeal from the decision of the appraisers on such claim, to the canal board, who shall proceed to reverse, affirm or modify the appraisement, as in their opinion justice

<sup>1</sup> 1836, *ch.* 287, § 5, was as follows :

"It shall be the duty of one of the acting canal commissioners, in person or by agent, to attend in behalf of the state before the canal appraisers, on the hearing of claims for damages; and if, in his opinion, the interests of the state require it, he may employ counsel, and request the attendance and examination of witnesses on the part of the state.

1870, *ch.* 321, § 2, is as follows :

\* \* \* "The canal appraisers are hereby authorized and required to employ counsel on behalf of the state, on the hearing of such claims, as may be necessary to protect the interests of the state. All acts and parts of acts inconsistent with this act are hereby repealed." See *post*, § 460.

For legislation on the subject of employment and payment of agents of the commissioners, and of counsel before the appraisers, see this *ch.* (R. S., § 15), *ante*, § 258; 1871, *ch.* 668, repealed by 1872, *ch.* 826, and 1872, *chs.* 583, 700 and 850.

For notice of hearing required to commissioner and claimant, see 1866, *ch.* 836, § 6, *post*, § 435.

shall require; and their decision shall in all cases be final and conclusive.

§ 286. (*Same ch.*, § 4.) Every such appeal shall be made in writing, stating briefly the grounds on which the appeal is made; if made by the canal commissioners, one copy of the appeal shall be served on the canal appraisers, and another on the party claiming damages, his guardian or agent, either personally or by leaving the same at his usual place of abode; if made by the party claiming damages, one copy of said appeal shall be served on the appraisers, or one of them, and another on the canal commissioners.

To be in writing.

§ 287. (*Same ch.*, § 5.) It shall be the duty of the canal appraisers, within thirty days after any claim is decided upon, to make a transcript of the entry of such decision, and file the same in the clerk's office of the county in which the premises passed upon are situate; and in all cases the appeal must be made, and the proper copies served within three months from the time such transcript is filed in the clerk's office as aforesaid.

Time for appeal.

§ 288. (1868, *ch.* 579, § 1.) In all cases where by special act the canal appraisers have been or may hereafter be authorized, to hear and determine any claim for damages resulting from any cause, an appeal may be taken to the canal board from the decision or award of said canal appraisers, by the canal commissioners on the part of the state, or by any claimant affected by such award or decision. \* \* \*

Appeals under special acts.

§ 289. (*Same ch.*, § 2.) Such appeal shall be taken within three months from the time that such decision or award shall have been made and entered. \* \* \*

§ 290. (1870, *ch.* 763, § 2.) \* \* \* In any appeal by the canal commissioners, on the part of the state, from a decision or award made by the canal appraisers, the notice of appeal may be signed by any one or more of such commissioners, and the signatures of all shall not be required.<sup>1</sup>

Notice of appeal.

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<sup>1</sup> It was held in 1842, 3 Hill, 599, that an appeal brought by one commissioner in his own name, and the names of the others, under authority from them, was regular.

## OF CONTRACTS.

Contracts. § 291. (*Const., amendment, 1854, Art. VII, § 3.*) \* \* \*

All contracts for work or materials on any canal, shall be made with the person who shall offer to do or provide the same at the lowest price with adequate security for their performance.

Division  
engineers  
to make  
surveys,  
etc.

§ 292. (1850, *ch. 377, § 8.*) The division engineers shall, under the direction of the state engineer and surveyor, make or cause to be made all surveys, maps, plans, specifications and estimates that may be necessary or required by the canal board or canal commissioners to determine the proper location of the line of the canal, or any portion thereof, on their respective divisions, or that may be necessary preparatory to placing any work under contract for construction, and shall transmit a copy thereof to the state engineer and surveyor, who shall upon a due inspection and revision submit the same to the canal board with his approval indorsed thereon, and on obtaining thereon their certificate of adoption, he shall file the same in his office.<sup>1</sup>

§ 293. (*Same ch., § 9.*) Before any work shall be contracted for on any of the canals of this state, the division engineers shall ascertain or cause to be ascertained with all practicable accuracy the quantity of embankment, excavation, masonry and the quantity and quality of all materials to be used, and all other items of work to be placed under contract, a statement of which, together with maps, plans and specifications corresponding with those adopted by the canal board and on file in the office of the state engineer and surveyor, shall be publicly exhibited to persons proposing for the work to be let. The quantities so exhibited shall be used in determining the value of the propositions received, and after the contracts shall have been awarded, said statement of quantities, together with the maps, plans and specifications and all other papers relating to the work advertised, and which were exhibited as aforesaid, and are necessary to identify the plan and extent of the work so awarded, shall be filed in the office of the state engineer and surveyor, accompanied with the certificate of the division

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<sup>1</sup> Sections 9 and 10, of *ch. 72, of 1848*, "An act in relation to the office of state engineer and surveyor, and the engineer department," which relate to preparing and approving, maps, plans and estimates of new work, seem to be repealed by sections 8, 9 and 16, of *ch. 377, of 1850*.

or resident engineer, stating the time and place they were so exhibited. No alteration shall be made in any map, plan or specification adopted by the canal board, and so exhibited, or the plan of any work under contract during its progress, except by the consent and approval of the commissioner and the division engineer, nor unless the description of such alteration and the approval thereof be reduced to writing and be signed by the parties making the same, and a copy thereof shall have been filed in the office of the state engineer and surveyor. Nothing in this section contained shall be construed to authorize any change of plan that shall increase the expense of the work, or create any claims against the state for damages arising therefrom, unless a written statement setting forth the objects to be attained by such change, and the expense thereof shall have been submitted to the canal board, and their assent at a meeting in which the state engineer and surveyor were present shall have been obtained.<sup>1</sup>

§ 294. (*R. S.*, § 31.) All contracts for the construction of a canal, and for the making of any repairs or improvements in the canals, directed by the legislature, or canal board, shall be made in writing, and of each contract, three copies shall be executed by the parties.

Contracts to be made in writing, three copies.

§ 295. (*R. S.*, § 32, *modified*, 1848, *ch.* 162.) One of such copies shall be retained by the board of canal commissioners, or the acting commissioner having the charge of such repairs or improvements; another shall be deposited with the [auditor].

Copies of them.

§ 296. (*R. S.*, § 33.) Public notice shall be given of the time and place, at which sealed proposals will be received for entering into contracts, under the thirty-first section, which notice shall be published for three weeks in succession in the state paper, and in one or more of the newspapers of each county, in which the work to be performed, or any part thereof, is to be made.

Notice for proposals.

§ 297. (*R. S.*, § 34.) All proposals for contracts, for which sealed proposals are to be offered, shall be for a sum certain,

Proposals for contracts.

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<sup>1</sup> The regulations and instructions established by the state engineer and surveyor, for the engineering department, will be found at the conclusion of [Article X] of this Manual. *Post*, § 882.

as to the price to be paid or received; and no proposition which is not thus definite and certain, or which contains any alternative condition or limitation, as to such price, shall be received or acted on.

§ 298. (*R. S.*, §.35.) No more than one proposition shall be received from any one person for the same contract, and all the propositions of the person offering more than one, for the same object, shall be rejected.

Commis-  
sioners  
may re-  
quire  
deposits.

§ 299. (1872, *ch.* 850, § 1, and 1873, *ch.* 766.) All contracts for work or material on any canal (other than ordinary repairs) which shall be directed by the canal board to be advertised and let, shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance, which letting shall be under regulations to be made by the board of canal commissioners as to the form, regularity and validity of all bids, securities and contracts.<sup>1</sup> And the canal commissioners may

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<sup>1</sup> This law re-enacts and amends that portion of *ch.* 930, of 1871, relating to the letting of new work, which established this system of requiring deposits to be made with the treasurer.

The following is the form of notice to contractors, and regulations prescribed by the canal commissioners, in use in 1873 :

**NEW YORK STATE CANALS.—NOTICE TO CONTRACTORS.**—Pursuant to a resolution of the board of canal commissioners, notice is hereby given that sealed proposals will be received for the work hereinafter mentioned on the eastern division, at the canal commissioners' office, in the city of Albany, on Thursday, April 3, 1873, until 12 o'clock noon of that day.

And each and every proposal for each and every piece of work hereinafter mentioned must be accompanied by United States bonds, or stocks of the state of New York, or drafts on some banking institution in good credit within the city of New York or Albany, payable at sight to the President of the board of canal commissioners, and issued by national or state banks in good credit within this state, for at least the sum required for each and every piece of work.

The name of the party proposing for any work must be written across the face of the draft accompanying his proposition.

(*List of work on each division with amount of deposit required.*)

#### REGULATIONS.

Every proposal shall embrace a proposition for work, according to the specific heading of the proposal sheet. The prices for the quantities exhibited on the proposal sheet shall be inserted in the blank column headed



require the deposit by the proposer for said work or materials of such a sum in United States bonds or stocks of the state of New York, or money, not exceeding twenty nor less than eight per cent of the aggregate estimate of the work

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"PRICE," and no figures should be inserted in the column headed "AMOUNTS."

All propositions must be for a sum certain as to the price to be paid or received for each and every kind of work specified, in the quantities exhibited, and for no other; and no proposition, not thus definite, will be acted upon or canvassed.

All proposals where, in the opinion of the board of canal commissioners, the prices are not properly balanced, will not be canvassed. Any proposal containing one or more extravagant or excessive price or prices for any particular items of work, though other prices may be below their true value, and which, in consequence of such excessive prices, may, in the judgment of the commissioners, enhance the final cost of the work, will be adjudged as "not properly balanced." No canvass of bids will be deemed complete until approved by the board of canal commissioners.

In case the board of canal commissioners shall be of opinion that the proposals made at any meeting thereof, pursuant to any advertisement, are, in consequence of any combination or otherwise, excessive and disadvantageous to the state, they may decline all or any of the said proposals, and advertise anew for the work and materials embraced therein.

No more than one proposition can be received from any one person or firm for the same contract, and all the propositions of the person offering more than one for the same object shall be rejected.

The person or persons to whom the work may be awarded will be required to enter into contract for the performance of the work within ten days after the same shall have been awarded to him or them, at the place and upon the terms as to security as shall be prescribed by the board of canal commissioners.

The name or names of the persons proposing should be written out in full, with their place of residence and post-office address.

Attention is called to the following provisions of chapter 766, Laws of 1873:

"And in case the proposer, to whom such work shall be awarded, shall neglect or refuse to enter into said contract, the sum so deposited shall be forfeited to the state, and the commissioners shall pay the same into the state treasury, and it shall become a part of the canal fund. And upon the entering into said contract, the sum of money, bonds or stocks required by the commissioners as security for the entering into said contract, together with such other additional securities as they may require, may be held as security for the completion of the work, and shall be deposited with the treasurer as a special trust, to be returned by him to the contractor, with such further sum as he may have realized for the use thereof, when the commissioners in charge and the state engineer shall certify that the contractor has fully completed his contract, and that the state has no further claim upon such funds.

"But in case he shall enter into said contract and fail in the performance thereof, the same shall be declared abandoned by said commissioners, pur-

to be let, as they may deem necessary to secure the entering into said contract. And in case the proposer, to whom such work shall be awarded, shall neglect or refuse to enter into such contract, the sum so deposited shall be forfeited to the

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suant to the terms of the contract, then the sum of money so deposited shall be forfeited to the state, and paid into the treasury and become a part of the canal fund."

It is expressly understood and agreed that the party or parties of the first part is to perform all the conditions of his or their contract for the prices and compensations therein specified, without any further claim for compensation from the state.

The price or prices in the contract will be considered as including the expense of furnishing all the materials and performing all the work, according to the plans, specifications and notices exhibited at the letting, and for all increase of quantities that may arise in the progress of the work.

The person or persons to whom the work may be awarded will be required by the board of canal commissioners to give the bond for the payment of laborers' wages, as required by chapter 278 of Laws of 1850; and, also, the usual bond for fulfillment of contract.

No acceptance of a proposal or award of a contract by the board of canal commissioners, and no contract made by them, or any interest in the same shall be assignable to any person or persons.

Fifteen per cent of the amount of any work done or materials furnished, at the contract price thereof, shall be reserved by the canal commissioners until the whole work which is the subject of the contract shall have been fully and entirely completed.

Contractors will be required to receive and use in the work, when so directed, all such materials as belong to the state, on any of the above work, and allow therefor such prices as may be fixed by the commissioner and engineer in charge.

And in case the canal commissioners shall suspend the work hereby advertised for want of funds, or for any other cause whatever, after notice to the contractor or contractors, no claim whatsoever for interest, damages or prospective profits will be entertained or allowed to the contractor or contractors.

The plans, maps, specifications, quantities of materials, forms of contract, notices, and all necessary papers, with which proposers will be required to comply, will be ready for examination, for five days prior to the time limited for the letting, for the eastern division, at the engineer's office in the city of Albany, and for the work on the western division, at the engineer's office in the city of Rochester.

All proposals must be addressed to the board of canal commissioners, and there should be written on the envelope, "Proposals for public work," and the work proposed for should be designated.

Dated at ALBANY, *March* 20, 1873.

JOHN D. FAY,  
ALEX. BARKLEY,  
R. W. STROUD,  
*Canal Commissioners.*

state, and the commissioners shall pay the same into the state treasury, and it shall become a part of the canal fund. And upon the entering into said contract, the bonds or stocks or money required by the commissioners as security for the entering into said contract, together with such other additional securities as they may require, may be held as security for the completion of the work, and shall be deposited with the treasurer as a special trust, to be returned by him to the contractor with such further sum as he may have realized for the use thereof, when the commissioner in charge and the state engineer shall certify that the contractor has fully completed his contract, and that the state has no further claim upon such

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NOTE. — The annual appropriation acts for new work and extraordinary repairs of the canals, from 1867 to and including 1873, have contained the following provisions relating to the money appropriated and the work therein specified :

“In order to remove all doubts in respect to the authority of the canal commissioners to commence the new works for which appropriations are herein made, and no legislative direction is otherwise given by special laws, it is hereby declared that the said canal commissioners are hereby authorized to construct or cause to be constructed all such new works for which appropriations are herein made, subject, however, to all restrictions, provisions and conditions contained in this act.”

“No part or portion of the moneys herein appropriated for new work shall be expended or paid, nor shall any contract involving such expenditure and payment be made on behalf of this state, until the maps, plans and estimates for such new work shall have been submitted to and approved by the canal board.”

“No more money shall be expended on the works hereinbefore enumerated than is above appropriated, and it shall not be lawful for the officers having in charge the execution of the said works to make any contracts whereby any expenditure in excess of the appropriation will be incurred, or any further appropriation for the same rendered necessary.”

“To meet the appropriations made in this act of the moneys to be collected by and upon the said tax with as little delay as practicable, the commissioners of the canal fund or comptroller may, from time to time, invest in the said tax any surplus moneys of the principal of the sinking funds under article seven of the constitution, a sum or sums not exceeding in all the amount to be realized from said tax hereby authorized ; and the moneys so invested shall be applied to pay the appropriation under this act ; and so much of the moneys arising from the said tax as may be necessary, when paid into the treasury, is hereby pledged, and shall be applied in the first instance, to re-imburse the said sinking funds for the amount invested in said tax, and for the interest on the same, at a rate not exceeding six per cent per annum, from the time of investment to the day of payment.”

The acts for 1870, '71 and '72 also contain the following provision :

“The final account for any new work authorized by the provisions of this act or any previous acts, or for which money has been or is hereby appropriated, may be subject to revision by the canal board.”

funds. But in case he shall enter into said contract and fail in the performance thereof, the same shall be declared abandoned by said commissioners, pursuant to the terms of the contract, then the bonds or stocks or money so deposited shall be forfeited to the state, and paid into the treasury and become a part of the canal fund. The canal board may, in the resolution authorizing any work to be let, prescribe the length of time of advertising not less than ten days. \* \* \*

**Contracts.**     § 300. (1866, *ch.* 836, § 9.) It shall be the duty of the canal board to cause to be inserted in all contracts for work or repairs on the canals, a clause requiring the contractor to pay all damages arising to the State or to any individual, by reason of the negligence, default or misconduct of such contractor in the performance of such contract.<sup>1</sup>

**Security.**     § 301. (*R. S.*, § 36.) Every person who shall enter into any contract for the supply of materials or the performance of labor, on any canal, shall give satisfactory security to the canal commissioners, for the faithful performance of his contract, according to its terms; and if any person, having given such security, shall neglect or refuse to perform his contract he shall be excluded from any interest in any future contract, in relation to the same object.

**Contractors to give bonds to pay laborers.**     § 302. (1850, *ch.* 278, § 1.) It shall be the duty of any canal commissioner or other officer having charge of the letting of any contract for work on any of the canals or other public works of this state, to require and take, in addition to the bond now required by law for the security of the state, a bond with good and sufficient sureties not less than two, conditioned that such contractor shall well and truly pay in full, at least

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<sup>1</sup> Ch. 766, of 1873, providing for new work, etc., imposes the following condition to the erection of the new bridges, named in the act: "The canal commissioner shall in each instance, before proceeding to the construction of the bridges provided for in this act, require and receive from all persons, whose property, rights or interests may be affected by such bridge, approaches or embankments, a full and sufficient release, legally executed and acknowledged, free of all expense to the state, of all claims for damages in consequence of the construction of said bridge, or of the approaches or embankments of the same, and also a good and sufficient license or permission to the state, duly executed and acknowledged, to alter, change and raise such bridge, approaches or embankments, wherever necessary, which necessity is to be determined by the canal commissioners."

once in each month, all laborers employed by him on the work specified in such contract, which bond shall be duly acknowledged before an officer authorized to take acknowledgment of deeds, and filed by the officer taking the same, in the office of the clerk of the county, wherein such work or contract is to be performed. And when such work shall be partly in two or more counties, there shall be such a bond filed in the clerk's office of each county. Where filed.

§ 303. (*Same ch.*, § 2.) Suits may be commenced on said bond before a justice of the peace, when the amount claimed shall not exceed the jurisdiction of a justice of the peace, and a transcript of such bond, duly authenticated by the county clerk, may be used in evidence in such suit. When prosecuted.

§ 304. (*Same ch.*, § 3.) The bringing of a suit by one or more laborers, upon such bond, shall not operate as a bar to the bringing of other suits thereon, by any of the parties for whose benefit such bond was taken, and to whom such contractor shall be indebted for labor. But no recourse shall be had to the sureties upon such bond, unless proceedings shall be commenced within thirty days after the completion of the labor, the payment of which is secured by such bond. But nothing in this act contained shall prevent or bar a suit against such contractor within the time limited by law. Suits, how brought.

§ 305. (1849, *ch.* 348, § 2.) No alteration shall hereafter be made in the manner of executing or performing the work under any contract, which shall materially increase or diminish the quantity of material to be furnished or work done under such contract, unless such alteration shall be expressed in a writing signed by the parties to the contracts, or by the canal commissioners in pursuance of the provisions of the contract, of which writing there shall be made the same number of copies to be deposited in the same places as is provided in relation to contracts on the public works. Provision relative to the manner of executing the work under contract.

§ 306. (*R. S.*, § 37.) No allowance over and above the contract price shall be made by the canal commissioners to any contractor, unless such extra allowance shall be directed by the canal board.<sup>1</sup> No extra allowance.

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<sup>1</sup> By ch. 348 of 1849, the canal board are prohibited from making extra allowances to contractors on contracts made since the passage of the act.

Materials  
exempt  
from exe-  
cution.

§ 307. (*R. S.*, § 38.) All materials procured, or partially procured, under a contract with the canal commissioners, shall be exempt from execution; but it shall be the duty of the canal commissioners, to pay the moneys due for such materials to the judgment creditor of the contractor, under whose execution such materials might otherwise have been sold, upon his producing to them due proof that his execution would have so attached; and such payment shall be held a valid payment on the contract.

Payment  
of con-  
tracts.  
13 Barb. 86;  
7 N. Y. 9.

§ 308. (*R. S.*, § 39; *modified* 1848, *ch.* 162.) Either of the canal commissioners may draw upon the [auditor] for any sum to be paid to a contractor upon his contract; and if a copy of such contract shall have been duly filed in the office of the [auditor], and a receipt of the contractor for such draft shall also be filed in the same office, it shall be the duty of the [treasurer, on the warrant of the said auditor,] to pay the draft.

Money,  
when to be  
paid to  
contract-  
ors.

§ 309. (1847, *ch.* 278, § 2.) No money shall hereafter be advanced or paid to any canal contractor on his contract except on the sworn certificate of an engineer in such form as the canal board shall prescribe, that he has actually measured the work or material included in the certificate, and believes that the quantities therein stated do not exceed the amounts actually performed or delivered by the contractor, which certificate shall be sworn to before either of the canal commissioners or any judge or justice of the peace.

§ 310. (*Same ch.*, § 3.) The sworn measurement referred to in the preceding section shall be given to the canal commissioner, and shall accompany the receipt of the contractor when presented at the canal department for final audit.

Engineers  
to record  
measure-  
ments.

§ 311. (*Same ch.*, § 4.) Every engineer on whose certificate payments are made for any public work shall enter in a book to be kept for that purpose every measurement made by himself or his assistant, with such explanation in regard to the location and character of the material, if the same has not been placed in the public work, as will enable his successor to identify and secure the material for the use of the state, and on leaving the public service, such book of measurements shall be deposited with the secretary of the board of canal commissioners.

§ 312. (1866, *ch.* 836, § 2.) It shall be the duty of the auditor of the canal department to reject and refuse payment of any canal commissioner's draft or certificate, or any other claim against the state, founded on the certificate or measurement of an engineer in the employment of the state, unless such estimate and measurement shall be sworn to and verified, as provided in the second section of the act entitled "An act in relation to the public works, and the officers connected therewith," passed March 12, 1847.

*Affidavits  
to accom-  
pany  
drafts, etc.*

§ 313. (1862, *ch.* 137, § 2.) The canal commissioner in charge may certify the amount due any contractor on a final estimate made on the completion of a contract, or a cancellation thereof, for work done and materials furnished since the thirteenth day of April, one thousand eight hundred and fifty-nine.<sup>1</sup>

*May cer-  
tify to  
amount of  
final  
account.*

## ENGINEERS.

§ 314. (1837, *ch.* 451, § 1; *modified* 1848, *ch.* 162.) Either of the acting canal commissioners may draw upon the [auditor] for any sum to be advanced to an engineer to meet the expenses of the engineer department; and if the bond of said engineer shall have been duly filed in the office of the [canal department], and a receipt of the engineer for such draft shall also be filed in the same office, it shall be the duty of the [auditor] to pay the draft; provided the advances to an engineer, unaccounted for, shall at no time exceed the sum of five thousand dollars.

*Drafts for  
payment  
of engin-  
eers.*

<sup>1</sup>The Manual of canal laws, compiled in 1863, contains the following section from *ch.* 149, Laws of 1859: "An act to provide the means for the enlargement and completion of the canals of this state, for the fiscal year commencing October 1, 1859, and for other purposes."

"§ 4. The auditor of the canal department shall notify the canal commissioners, respectively, when and as soon as he shall have any money on hand subject to their drafts, and the amount thereof, and for what object or work it is applicable; and the canal commissioners shall make no more drafts on the said auditor until the receipt of the notice aforesaid, or for a larger sum, or different object, than authorized by such notice from the auditor; but nothing in this act shall prevent the canal commissioner or engineer in charge from certifying the amount due the contractor, for work done and materials furnished, or for any award made by the canal appraisers for land taken, or damages done previous to the passage of this act."

This section seems to apply only to the funds provided and work authorized by that chapter, but the latter clause, relating to certificates, may be of general import as to the implied authority of canal commissioners to issue certificates for awards of canal appraisers.

Engineer  
to execute  
bond.

§ 315. (*Same ch.*, § 2; *modified* 1848, *ch.* 162.) Before any advance shall be made to an engineer, he shall execute and file in the office of the [auditor], a bond to the people of this state, for the faithful expenditure of the moneys which shall be intrusted to him, in such penalty and form as the canal board shall direct, and with such sureties as the [auditor] shall approve, upon which said bond the said engineer and his sureties shall be responsible to the state for moneys advanced to him as aforesaid.

To ac-  
count  
once in  
ninety  
days.

§ 316. (*Same ch.*, § 3; *modified* 1848, *ch.* 162.) Such engineer shall, as often as once in ninety days, render his account to the [auditor], who shall audit the same; and if he shall omit to render his account, or his accounts as rendered be not satisfactory, the [auditor], shall notify the canal commissioners and the commissioners of the canal fund thereof; and no further advances of money shall be made to such engineer.

Accounts  
to be cer-  
tified by a  
canal com-  
missioner.

§ 317. (*Same ch.*, § 4; *modified* 1848, *ch.* 162.) Before any engineer's account for expenditures shall be presented to the [auditor], the canal commissioner having charge of that part of the canal on which such engineer is employed, shall certify on such account that he has examined the same; that the several disbursements specified therein were made under his direction on the canal, or for payments necessary to be made thereon; and that he believes such disbursements to be proper and reasonable, and to have been made as charged.

#### ACCOUNTS AND REPORTS.

Penalties,  
etc.

§ 318. (*R. S.*, § 41; *modified* 1848, *ch.* 162.) In all cases in which suits shall be brought by the canal commissioners, or under their direction, for the recovery of penalties or damages under the provisions of this title, it shall be their duty to keep an accurate account of the recoveries, and of the costs and expenses, and after deducting such costs and expenses, to pay over the residue of the sums received [into the state treasury], or account for the same with the [auditor].

Certain  
officers not  
to be held  
to bail.

§ 319. (*R. S.*, § 43.) No acting commissioner, superintendent of repairs, collector or lock-keeper, on any canal, shall be held to bail, or taken by warrant, in any civil suit, for any act



done or omitted to be done by him, in the exercise of his official duties. 4 Denio, 356; 20 Johns. 735.

§ 320. (1847, *ch.* 278, § 13.) All work connected with the enlargement and improvement of the Erie canal, done under contracts made by the canal commissioners, shall be kept distinct as far as practicable from the ordinary repairs of the canal, by superintendents. The regulations of the canal board, made in compliance with the provisions of the preceding sections of this act, shall apply to all proceedings of the canal commissioners and engineers, in giving notice and receiving propositions in relation to any of the public works.<sup>1</sup>

Work by  
contract  
on Erie  
canal.

§ 321. (*R. S.*, § 40; *modified* 1848, *ch.* 162.) No canal commissioner shall be allowed as such, to have in his hands at any one time, more than ten thousand dollars; and every sum advanced to, or received by him, shall be deemed to remain in his hands until its application shall have been properly accounted for to the [auditor].

Advances  
to commis-  
sioners.

§ 322. (*R. S.*, § 42; *modified* 1848, *ch.* 162.) It shall be the duty of the canal commissioners to account and settle with the [auditor] on or before the fifteenth day of January in each year, for all moneys received by them, and each of them, from \* \* \* the canal fund, or belonging to that fund; and such settlement, specifying the sums respectively paid to all contractors, engineers, agents and servants of every description, employed on the canals, and to all persons having received a compensation for damages, and the names of such persons shall, without delay, be reported by the [auditor] to the legislature.

To settle  
accounts.  
See § 161.

§ 323. (*R. S.*, § 44.) Within twenty days from the commencement of each annual session of the legislature, the canal commissioners shall make their report to the legislature; and in such report shall state the condition of the canals, and all the works and improvements connected therewith; the im-

Report to  
legisla-  
ture.

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<sup>1</sup> The latter clause of this section, as to proceedings of the canal commissioners, in giving notice and receiving propositions for public work, is amended by *ch.* 930 of 1871, and *ch.* 850 of 1872, which give the board of canal commissioners power to make regulations "as to the form, regularity and validity of all bids, securities and contracts," used in lettings, for works or materials on any canals.

provements and repairs made during the past year or contemplated to be made, and the amount of moneys, during the same period, received and expended by them, and each of them, in the discharge of their duties, and shall recommend such measures, in relation to the canals, as they shall deem the public interests to require.

Time of  
completion of  
report.

§ 324. (1859, *ch.* 437, § 1.) \* \* \* State officers or heads of departments, required by law to submit an annual report to the legislature of this state, are hereby required to complete their several annual reports for the previous fiscal year, ending on the thirtieth day of September, of each year, on or before the tenth day of December succeeding, and cause the same, on or before that day to be placed in the hands of the person having the contract to do the printing for the senate and assembly under and in pursuance of the provisions of § 2, *ch.* 24, of the Laws of 1846.<sup>1</sup>

#### OF SUPERINTENDENTS, ESTIMATES, ETC.

Advances  
to superin-  
tendents,  
how made.

§ 325. (1837, *ch.* 451, § 7; *modified* 1848, *ch.* 162.) Before any advance of money shall be made to a superintendent of canal repairs by the [auditor], he shall make out a detailed statement, in such form as the said [auditor] shall prescribe, of the several anticipated objects of expenditure on the line of canal under his charge.

Do.

§ 326. (*Same ch.*, § 8; *modified* 1848, *ch.* 162.) If the said estimate shall be filed in the office of the [auditor], with the certificate thereon of the acting canal commissioner, stating that in his opinion, the whole amount or if less than the whole amount, what portions of the said estimate should be advanced, the [auditor] may make advances on the same, in such sums, and as often as [he] may deem necessary: provided such advances shall not exceed the amount certified by the commissioner.

Do.

§ 327. (1859, *ch.* 495, § 8.) When any superintendent of canal repairs, or resident engineer having charge of such repairs, shall submit to the canal commissioner in charge the detailed statement of the several anticipated objects of expenditure on the line of the canal under his charge, it shall be the

<sup>1</sup> See *ante*, § 162, and note.

duty of such commissioner, if he dissents from any particular object of expenditure set forth in such estimate, in whole or in part, or if he shall consider the sum estimated for the objects named to be larger than will be required, to state, in writing, on the estimate, his allowance or disallowance of each particular object of expenditure named therein, and of the amount which in his judgment may be required for each work or object; and every such superintendent and engineer shall apply the sums so estimated and allowed to the work or object named in such estimate, and to no other purpose whatever.<sup>1</sup> And all orders and directions given by any engineer to any contractor on the public works, during the progress of the same, and in relation thereto, shall be in writing.

§ 328. (1847, *ch.* 278, § 5.) Each canal superintendent under such regulations as shall be prescribed by the canal board, shall procure all boats, wheelbarrows, tools and implements, lumber, stone and other materials required for the ordinary repairs of the canals by giving notice for two weeks in two papers designated to publish the laws in each county through which his section of the canal passes, of the day and hour when sealed propositions will be received for the supply of the articles required. In addition to the requirements of sections thirty-four and thirty-five, article two, title nine of chapter nine of the first part of the Revised Statutes, the canal board shall prescribe such rules in regard to the notice to be given, and the time and manner of receiving and opening proposals as will effectually secure the rights of the bidders and the interests of the state, and in rebuilding locks, bridges and other structures on the finished canals the canal commissioners shall contract for the same on sealed propositions, except during the season of navigation.

Boats, implements and materials, how procured for repairs.

When commissioners shall contract.

§ 329. (*Same ch.*, § 6.) Every person proposing to become a contractor for furnishing materials or tools under this act shall accompany his proposals by an engagement, substantially in such form as said canal board shall prescribe, signed by some responsible person or persons guaranteeing that said person or persons making such proposal shall, within ten days after the acceptance of his or their proposals by said commissioners, enter into a contract in writing with said commission-

Proposals, how to be made.

<sup>1</sup> See *post*, note to §§ 335 and 338.

ers and their successors in office for the faithful performance of such proposals; and if any person or persons to whom any contract may be awarded shall neglect or refuse to enter into such contract within such time as is herein prescribed for that purpose, it shall be the duty of said commissioners to receive further proposals for furnishing such materials and tools as remain uncontracted for by reason of such neglect, and to prosecute the person or persons so neglecting to enter into contract according to their proposals and their sureties for such damages as the state may have sustained by reason of such neglect or refusal.

Contractors to give security.

§ 330. (*Same ch.*, § 7.) Every contractor shall give satisfactory security to the canal commissioners for the faithful performance of his contract, and if any person or persons having entered into any such contract shall fail, neglect or refuse to perform his contract or the requisitions of the canal commissioners or superintendent having the oversight and charge thereof, made in conformity with such contract, such contract may by said canal commissioners be declared abandoned, and such person or persons shall be thereafter excluded from any interest in any future contract in relation to the same and all similar objects.

Penalty for neglect or refusal to perform contract.

§ 331. (*Same ch.*, § 8.) If any contractor for the furnishing of any tools or materials upon any section or sections of any of said canals shall fail, neglect or refuse to perform his contract relative thereto, or to comply with any requisition made in accordance therewith of any acting canal commissioner or superintendent in charge of any such section or sections, it shall be the duty of such commissioner or superintendent under his order to procure all such tools and materials as may be necessary for immediate use and until such contract shall be relet, and such contractor and his sureties shall be liable for all damages which may result from such neglect or refusal, together with all necessary extra cost of materials and tools over and above the contract price, rendered necessary to be purchased or procured by any commissioner or superintendent by reason of such neglect or refusal.

In case of breaches, etc., deficiencies to be supplied.

§ 332. (*Same ch.*, § 9.) In the event of any breach or other extraordinary event rendering necessary an increased quantity or amount of materials or tools upon any section of said canals, the supply of which cannot consistently with the safety and

requisite good reparation or condition of said canals be obtained under and by virtue of the contracts herein required to be made in season for the exigencies of the occasion, any canal commissioner or superintendent in charge of any portion of said canals where such necessity may exist, is hereby authorized and required to supply any deficiency that may be found to exist upon the best practicable terms for the interest of the state, rendering to the canal board as soon as consistent thereafter, a just and true detailed statement of the materials or tools purchased and of the circumstances rendering such purchase necessary, which statement, or a copy thereof, shall be communicated to the legislature at its next session. But nothing herein contained shall be so construed as to permit the purchase of any materials or tools for the supply of which contracts are in existence in any other manner than by contract, whenever the same can be procured by contract without delay to the navigation of the canals or injury to the interest of the state.

§ 333. (*Same ch.*, § 10.) All materials and tools purchased by and delivered or offered for delivery in pursuance of any contract made under the provisions of this act shall be carefully and thoroughly examined and inspected by an acting canal commissioner or superintendent in charge of the section where the same may be delivered for such use, and such examination and inspection is hereby required to be made by the commissioner in person as far as shall be consistent with the discharge of his other necessary official duties; and the officer making such examination and inspection shall immediately thereafter make a report to the canal board of such examination and inspection, in which he shall state the quantity, quality and amount or number of the materials or tools examined and received or rejected as being or not being in conformity with the contract under which they may be offered for acceptance; and when any portion of such materials or tools shall be rejected as not in conformity with the contract, the reasons for such rejection shall be stated and set forth in such report, which shall contain an account of the time when and place where such examination was made, and the section or sections for which such materials or tools were designed for use, so far as the same are accepted, specifying the quantity, number and amount by items, of all materials and tools for each and every of said sections for repairs, and which said report shall be made under the oath or

Tools and materials to be examined.

affirmation, before some proper officer authorized to administer oaths, of the person or persons making the same.

Settlement  
of con-  
tracts.  
7 Barb. 208.

§ 334. (*Same ch.*, § 11.) All contracts made in pursuance of this act shall contain a provision for the speedy and equitable adjustment of all questions that may arise relative to the performance or otherwise of any of said contracts.

Money,  
when and  
how to be  
paid.

§ 335. (*Same ch.*, § 12; *modified* 1848, *ch.* 162.) The [auditor is] hereby authorized and required to pay from the moneys in their hands which may at the time be appropriated for the repairs of the canals of the state, all such sums of money as shall from time to time become due to contractors by reason of the performance of any contract entered into in pursuance of this act, but no such payment shall be made for any materials or tools except such as shall have been accepted as being in conformity with the contract under which they were delivered, and of which acceptance the report required by the tenth section of this act shall have been duly filed with the canal board or in the office of the [auditor] of the canal department, and when such report shall have been made by a superintendent of repairs and not by the commissioner having charge of that portion of the canals where such materials or tools were delivered and accepted, it shall be the duty of the commissioner so in charge, and he is hereby required to state that such materials and tools were in his judgment necessary for use upon the section where delivered, or would become necessary within a period in such statement to be specified, that the purchase thereof is in his belief in pursuance of some contract, specifying with whom and the reasons why such examination was not made by himself in person; which statement shall be verified by the oath or affirmation of the commissioner making the same, annexed to such report and filed therewith.<sup>1</sup>

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<sup>1</sup> This method of purchasing tools and materials for ordinary repairs, by contract on sealed propositions, established by ch. 278, Laws of 1847, sections 5 to 12, inclusive, is not repealed, but it has been modified and practically superseded by the provisions of the three following sections, *post*, § 336, § 337 and § 338, relating to purchases of materials and tools for that purpose, passed in 1849, 1859 and 1866, respectively, and by the form of detailed estimates for superintendents' expenditures now in use.

Either system, so far as it relates to superintendents, is subject to modification by the canal board under Laws of 1870, ch. 55, § 6 (§ 528), which provides that "The canal board shall determine the method or system by which the repairs of the canals shall be made, and their management conducted."

§ 336. (1849, *ch.* 363.) The canal commissioners are hereby authorized to direct the superintendents of canal repairs to purchase materials and tools for the ordinary repairs of the canals, without advertising for the same, whenever in their opinion the interests of the state will be promoted thereby; and shall not be bound to accept proposals unless they deem it for the interests of the state.

Purchase  
of tools,  
etc.

§ 337. (1859, *ch.* 495, § 2.) All contracts entered into by any canal commissioner, superintendent of canal repairs, or engineer in charge of repairs, for the delivery of timber or lumber for the repairs of the canals, or to do or complete a specific job of work relating to such repairs, and involving the performance of labor, and the furnishing of materials, when not advertised to be let to the lowest bidder, shall be in writing; and such contract, duly authenticated, shall, within fifteen days after the same shall be executed, and before any money shall be paid thereon, be filed in the canal department; and all such contracts shall state the time within which the same is to be performed and executed, which shall not exceed one year from the date thereof.

Contracts  
for lum-  
ber, etc.,  
for repairs;  
delivery  
of, etc.

§ 338. (1866, *ch.* 836, § 3.) No superintendent of canal repairs shall have any authority to contract for the delivery of or to purchase any tools, implements, materials, boats or other matter or thing to be used in the repairs of the canals, except upon the certificate of the canal commissioner in charge first had (*and*) obtained, designating the number and quantities with the prices to be paid for such tools, implements, materials and boats; and every superintendent of repairs who shall violate the provisions of this section or who shall apply any of the moneys received by him upon a detailed estimate, to objects, works or purposes other than what is specifically named and described in the detailed estimate upon which the moneys were advanced to him, shall be removed from office, and the canal board are hereby authorized and directed to hear and determine all complaints made against any superintendent of repairs for a violation of the provisions of this section, but the provisions of this section do not apply to sudden breaks and breaches in the canals during navigation, when the necessities of case may call for immediate action before the canal commissioner can be consulted.<sup>1</sup>

Authority  
for pur-  
chasing  
tools, etc.

<sup>1</sup> See Canal Board Resolutions, Nos. 17-31, p. 362.

Price of  
labor how  
fixed, etc.

§ 339. (*Same ch.*, § 1.) No superintendent of repairs shall pay a higher price or compensation to any foreman, lock tender or other subordinate person necessary to enable him to discharge his official duties, nor for any double or single team, nor for any mechanical labor, than shall be fixed by the board of canal commissioners; and it shall be the duty of the said board of canal commissioners to fix, from time to time, the rate of compensation for the labor and service herein mentioned, and shall notify the several superintendents and the auditor of the canal department thereof, and no resolution of the said board increasing the rates of compensation for labor and service beyond a price previously fixed shall have a retroactive effect.<sup>1</sup>

Eight  
hours a  
day's  
work, etc

§ 340. (1870, *ch.* 385, § 1.) On and after the passage of this act, eight hours shall constitute a legal day's work for all classes of mechanics, workingmen and laborers, except those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted.

To whom  
the act  
applies.

§ 341. (*Same ch.*, § 2.) This act shall apply to all mechanics, workingmen and laborers now or hereafter employed by the state, or municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for the performance of public works.

Penalties,  
etc.

§ 342. (*Same ch.*, § 3.) Any officer or officers, or agents of this state, or of such corporation, who shall openly violate or otherwise evade the provisions of this act, shall be deemed guilty of malfeasance in office, and be liable to suspension or removal accordingly by the governor or head of the department to which such officer is attached.

Do.

§ 343. (*Same ch.*, § 4.) Any party or parties contracting with the state or any such corporation, who shall fail to comply with, or secretly evade the provisions hereof, by exacting and requiring more hours of labor, for the compensation agreed to be paid per day, than is herein fixed, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine, not less than one hundred nor exceeding five hundred

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<sup>1</sup> As to removal of superintendents by the canal commissioner in charge, see Art. 4 "Of the canal board," *post*, § 489.



dollars, and in addition thereto, shall forfeit such contract at the option of the state.<sup>1</sup>

## ALBANY BASIN.

§ 344. (1849, *ch.* 200, § 1.) The commissioners of the canal fund shall borrow on the credit of the state, a sum which shall be adequate to pay to the city of Albany one hundred and twenty-one thousand four hundred and sixty-two dollars and sixty-three cents, with interest at the rate of six per cent per annum, from the twentieth day of February, eighteen hundred and forty-three, to the time of such payment, for the expenses incurred by the said city for excavating, clearing and cleaning out the basin opposite the said city at the termination of the Erie and Champlain canals, and also a further sum of thirty thousand dollars to be paid to the owners of the pier connected with said basin, in lieu of tolls as heretofore paid to the said pier owners. \* \* \*

Albany  
basin loan

§ 345. (*Same ch.*, § 4.) The said sum of one hundred and twenty-one thousand four hundred and sixty-two dollars and sixty-three cents, with interest thereon, at the rate aforesaid, from the time in the first section of this act specified, to the time of the payment thereof, to be obtained by the aforesaid loan, is hereby appropriated and directed to be paid in the same manner as other expenses of the canals to the mayor, aldermen, and commonalty of the city of Albany, in full payment and discharge of all claims of the said corporation for any expenses incurred by them at any time previous to the passage of this act, for excavating, clearing and cleaning out of the said basin at the eastern termination of the Erie and Champlain canals, and of all interest of said city, and of the pier owners, in said basin. The sum of money appropriated and directed to be paid to the mayor, aldermen and commonalty of the city of Albany by the preceding sections of this act, shall be applied to and made a part of the "sinking fund" heretofore provided for the payment of the public debt of the city of Albany, and applied to the payment of the debt due by the city to the state, which may have been incurred or contracted prior to the first of May, one thousand eight hundred and forty-eight, and to no other purpose whatever; provided that nothing in this act contained, shall be so construed as to

Appropri-  
ation of.

<sup>1</sup> § 5 of this act repeals the eight-hour law of 1867, *ch.* 856.

create any liability on the part of the state to pay any damages that may have been sustained by any person or persons whomsoever, in consequence of any proceedings or acts done under or by virtue of the several acts of the legislature mentioned in the seventh section of this act, or any of the acts amendatory of the same.<sup>1</sup>

§ 346. (*Same ch.*, § 6.) The ninth section of the said act, [*of April 5th*, 1823], whereby certain tolls on canal boats, craft and lumber are directed to be collected and to be paid over to the pier owners, is hereby repealed. \* \* \*

§ 347. (*Same ch.*, § 7.) This act shall be a final settlement of all claims which may exist against the state in favor of the city of Albany, or in favor of any citizens thereof, and also of the pier owners, under the several acts passed April fifth, eighteen hundred and twenty-three, April twenty-seven, eighteen hundred and thirty-five, April fourteen, eighteen hundred and thirty-six, May sixteen, eighteen hundred and thirty-seven, including all acts amendatory to the same, so far as all or any of the several acts relate to the Albany basin or the pier company.

Rates of  
toll.

§ 348. (*Same ch.*, § 9.) The same rates of toll shall hereafter be charged and collected for said basin as on the canals of this state, computing the same in all cases as one mile in length, and which shall be considered as forming part of the canal revenues, and not be diverted therefrom, and the said basin shall remain free for canal boats and canal craft, from any charge or wharfage or dockage, and the said basin shall be owned by and remain the property of this state, and be

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<sup>1</sup> *Albany Basin*. See Laws of 1823, ch. 111. "An act authorizing the construction of a basin in the city of Albany, at the termination of the Erie and Champlain canals," passed April 5th, 1823.

Also, Laws of 1825, ch. 276; 1828, ch. 189; 1833, ch. 238, to extend the patents of certain water lots easterly; 1834, ch. 298; 1835, ch. 163; 1836, ch. 139; 1837, chs. 453 and 467; 1840, ch. 288; 1841, chs. 51 and 113; 1847, ch. 10; 1848, ch. 350; 1849, chs. 200, 272 and 429. (The general appropriation acts from 1850 to 1865 inclusive, contain annual appropriations "for interest on the stock issued for the Albany basin.") 1866, ch. 503; 1867, chs. 238 and 560, and 1869, chs. 32 and 642. Also, canal commissioners, report, 1866, page 32 and map; canal board proceedings, 1869, pages 175 and 182.

Four slips in lumber district, Albany, granted to S. Van Rensselaer, canal board proceedings, Dec. 6, 1866.

under the care and charge of the canal commissioners. The owners of the said pier shall forever hereafter keep the said pier in good repair, to the satisfaction of the canal commissioners.<sup>1</sup>

§ 349. (1866, *ch.* 503, § 1.) The contracting board, under the direction of the canal board, are hereby authorized and empowered to improve the Albany basin as proposed and laid down on a map accompanying the report of the state engineer and surveyor to the legislature, for the year 1865, entitled "Map of Albany basin," or upon such modifications and change of plan so far as it relates to the contraction of said basin, as the canal board may determine. Improve-  
ment of.

§ 350. (*Same ch.*, § 2, as amended 1867, *ch.* 238.) The said Do. board are also empowered to narrow said basin by constructing a new line of docks on the west side thereof, and causing the same to be properly filled in between such new line and the present line of docks along Quay street; but such construction and narrowing shall not be made, without the written consent of two-thirds of the owners of the lots on Quay street, opposite to where such improvements are proposed, nor then, unless such improvement can be made without any expense to the state, nor without the previous sanction of the canal board.

§ 351. (*Same ch.*, § 3.) If any of the bridges crossing said Do. basin, other than the Hudson River Railroad bridge, shall be injured in consequence of the improvement made in the basin as provided in this act, such damage shall be assumed and paid by the city of Albany, and the state shall not be liable for any cost or damage for said injury; and before any work shall be done under the provisions of this act, the mayor, aldermen and commonalty of the city of Albany, shall file their assent thereto in the canal department, together with a written obligation assuming the payment of all such costs and damages.<sup>2</sup>

§ 352. (*Same ch.*, § 4.) After the openings at the north and south ends of said basin shall have been enlarged as contemplated, and the canal board shall deem it necessary to contract the opening through the pier opposite the foot of Maiden

<sup>1</sup> As to wharfage, see § 356, *post*.

<sup>2</sup> For consent of city of Albany, see canal board proceedings, April 12, 1866.

lane, they shall have power to authorize and direct such contraction to be made, providing said board can procure said contraction to be made for a sum not to exceed five thousand dollars in addition the value of the land to be reclaimed by such contraction, which land so to be reclaimed, said board is hereby authorized to grant, sell and convey for that purpose.

**Do.**        § 353. (*Same ch.*, § 5.) The canal board is hereby authorized and empowered to cause an opening to be made through the pier between the railroad and Columbia street bridges, of sufficient size to accommodate vessels employed in canal and river commerce, and to allow them to pass through conveniently, provided such opening can be made without cost or expense or liability for damages to the state, or to the city of Albany. The sides of such opening shall be properly secured against the effects of water and of ice.

§ 354. (*Same ch.*, § 6.) The state shall not be liable for any damage to property caused by the making of such improvements, but if any claim shall arise the same shall be paid by the city of Albany; and said city, before such work is commenced, shall give their assent to assuming such liability, and shall file with the canal board an obligation assuming all such liability, and indemnifying the state against the same.

**Expense.**    § 355. (*Same ch.*, § 7.) The expense incurred under this act, to be paid by the state, shall not exceed the sum of thirty-five thousand dollars, and shall be paid by the treasurer of the state on the warrant of the comptroller, out of any moneys belonging to the general fund, and the sum of thirty-five thousand dollars, or so much thereof as may be necessary to carry into effect the provisions of this act is hereby appropriated to that purpose. This law shall not release the contractor of repairs on section first of the Erie canal from his contract, and it shall be the duty of the canal commissioners to maintain the navigation for boats in said basin to the depth of the mitre-sill of lock number one of the Erie canal.

Wharfage  
in the  
harbor  
and port  
of Albany.

§ 356. (1867, *ch.* 560, § 1.) The power which the mayor, aldermen and commonalty of the city of Albany possess, to determine and fix the rate of wharfage to be paid to the owners of the docks along Quay street, in said city, by the owners or masters of any vessel liable to pay wharfage, shall extend to and include all the wharves and piers in the harbor and port of Albany. But

nothing herein contained, shall in any manner, alter or repeal section five of the act passed April 5, 1823, authorizing the construction of a basin at the termination of the Erie and Champlain canals.

No charge for wharfage or dockage shall be made against or collected upon any canal boat engaged in the navigation of the canals of this state, when passing the city of Albany, either in the canal basin, called the Albany basin, or in the Hudson river, outside the pier constituting the east line of said canal basin, unless said canal boats shall be actually engaged in receiving or discharging cargoes.<sup>1</sup>

Not to  
apply to  
canal  
boats un-  
less, etc.

§ 357. (1869, *ch.* 32, § 1.) The state engineer and surveyor and the canal commissioner in charge of the eastern division of the state canals, are hereby authorized and directed forthwith to do such and so much work and no more, in and about the Albany basin and lock opening into the same, as in their judgment will best tend to protect and preserve the interests of the state therein; provided, that upon consultation with the attorney-general of the state, they shall ascertain that no other party can be compelled under existing contracts and laws to do such work, or to pay such damages as may occur by reason of its not being done; the cost of such work not to exceed twenty thousand dollars.

§ 358. (*Same ch.*, § 3.) This act is passed and the appropriation made to provide for a pressing necessity, and to prevent great and irreparable mischief, and the same shall not be deemed as a recognition by the legislature, of the liability of the state to repair said basin, or to pay any damages to the property upon the said basin or pier. The said question of liability shall not be affected by this act, but the same shall be decided as if this act had not been passed. And nothing in this act contained shall impair or in any manner affect the liability of the city of Albany under their bonds to the people of this state, of the twenty-first of April, and on the twenty-ninth day of June, eighteen hundred and sixty-six; nor shall the work contemplated by this act be constructed without the consent of the said city, and of the pier company, duly filed with the said bond.

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<sup>1</sup> As to wharfage on the Hudson and Harlem rivers, see 1865, *ch.* 569.

**Do.**        § 359. (*Same ch.*, § 4.) No proceedings shall be had under this act, until the canal board shall have filed with the state engineer and surveyor a certificate stating that the expenditure herein provided is required to protect and render useful the property and canal interests of the state.

**Damages.**    § 360. (1869, *ch.* 642, § 1.) All persons who sustained damages to their property, situated on the pier, in the city of Albany, by reason of the freshet in the Hudson river in the month of January last, are hereby authorized and allowed to bring their actions for such damages in the name of the people of the state of New York, against the mayor, aldermen and commonalty of said city, upon a certain bond executed by said mayor to the people of the state, bearing date the twenty-first day of April, eighteen hundred and sixty-six; provided, however, that nothing in this act contained shall impair the right of the state to any action upon said bond, for any damages occasioned to the property of the state, or any damages which the state may be liable to pay to others who shall not avail themselves of the provisions of this act, and which are within the condition of the said bond; and, provided also, that nothing in this act contained shall be deemed or regarded as an admission of any liability, on the part of the state, for any damages occasioned by said freshet, nor shall the parties availing themselves of the provisions of this act be thereby deemed to have waived any just claim against the state. And nothing herein contained shall be construed as in any way affecting the question of the liability of the city of Albany upon said bonds.

#### ONONDAGA SALT SPRINGS.

**Duties of superintendent in use of water from the canal.**    § 361. (1859, *ch.* 346, § 33; *amended* 1872, *ch.* 599, § 1 and § 2.) It shall be the duty of the superintendent ("*of the Onondaga salt springs*") to cause the quantity of water which may from time to time be required for the efficient working of the pumps, or other machinery, for raising salt water from the wells and reservoirs now constructed, or which may hereafter be constructed, in the first, second and fourth districts, to be ascertained by competent engineers, and to certify the same to the canal commissioner in charge; and it is hereby declared to be the duty of such canal commissioner in charge, on receiving such certificate, to cause the quantity of water, thus certified and required by the superintendent, to be at all times

supplied to the Syracuse level of the canal, in addition to that usually required or supplied for the purposes of navigation, excepting, however, any period during which it shall be necessary to withdraw the water from said level for repairs. The certificate of the said superintendent shall be filed in the office of the said canal commissioner, and it shall be lawful for the superintendent, at all times, to draw from the canal the amount of water thus ascertained to be necessary, to be used for the purpose aforesaid, provided the navigation of the canal be not thereby impeded; and all bulk-heads, gates and other appurtenances required for taking and regulating the flow of such water shall be constructed and maintained by said superintendent.<sup>1</sup> (*Amendment 1872, ch. 599, § 1.*) Any property taken by virtue of this section shall be paid for by agreement or appraisal, in the manner provided for in the thirty-first section of this act. (§ 2.) This act shall only apply to water taken from the nine mile creek during the period of suspended navigation of the Erie canal, for the purpose of working the state pumps on the salt springs reservation.

§ 362. (*Same ch., § 46.*) Whenever the construction of any earth work shall be undertaken by the superintendent of the Onondaga salt springs, that shall require the services of an engineer, said superintendent may make application to the canal commissioner in charge of the Oswego and Erie canals on said reservation, for the services of such engineer; and if, in the said commissioner's judgment, the interests of the state will be promoted by the employment of such engineer, said commissioner may direct the resident engineer, on either the Oswego or Erie canal, by an order, in writing, to assume the charge of such work, under the direction of the superintendent, and to make surveys, maps, profiles, estimates and measurements thereof, in the same manner as if such work was a part of the public improvements of this state. Employment of engineer

§ 363. (*Same ch., § 142.*) The superintendent, with the consent of the canal commissioners, may take water from the Using water of canal.

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<sup>1</sup>§ 144 of this act repeals Title ten, ch. IX, Part 1, Rev. Stat. "*Of the salt springs,*" and all acts and parts of acts in addition to or amendatory thereof.

For a construction of § 44 of this act, see canal board proceedings, 1871, p. 234.

For awards for damages on nine mile creek during suspended navigation, payable from salt duties, see 1873, ch. 760.

canal sufficient to carry a pump for the purpose of raising salt water to supply the works now or which may be hereafter erected; but the water so taken may be resumed by the canal commissioners, whenever, in their opinion, it may be necessary for the use of the canal.

## FISHWAYS.

Fishways  
to be con-  
structed in  
Troy and  
Fort Miller  
dams.

§ 364. (1870, *ch.* 555, § 1.) It shall be the duty of the canal commissioners of this state to cause to be constructed and maintained, in the state dams across the Hudson river at Troy and Ft. Miller, in such manner as not to injure the said dams, fishways, at least one foot in depth at the edge of the dams, and of proper width to allow all fish endeavoring to migrate to the waters of the said river above the dams to pass over the same. The said fishways shall be placed at an angle of not more than thirty degrees, and extend entirely to the running water below the dams, and they shall be protected on each side by an apron at least one foot in height to confine the waters therein. The said fishways shall be constructed under the supervision of the fish commissioners of this state, and be located at such place in said dams and built in such manner and of such material as they may direct.<sup>1</sup>

## ERIE CANAL.

Enlarge-  
ment of  
locks.

§ 365. (1847, *ch.* 259, § 1.) Whenever, in the opinion of the canal commissioners, it becomes necessary to substitute new locks for the old locks on the Erie canal, the commissioners shall cause minute estimates to be made of the cost of rebuilding the lock or locks on the old plan, and also the cost of constructing the same on the enlarged plan, and adapting the work to the enlarged Erie canal; which estimates shall be submitted to the canal board, and when approved by that board, the canal commissioners shall proceed to construct the lock or locks on the enlarged plan; and all sums expended by them on

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<sup>1</sup> Ch. 781 of 1871, also directs the construction of a fishway "in the state dam across the Mohawk river at the upper aqueduct, near Schenectady," in the same terms. The appropriation clauses in both laws were insufficient, but by ch. 850 of 1872, \$2,000 is provided for the first two named, and \$1,000 for the latter.

§ 30, ch. 721 of 1871, directing fishways to be maintained on all dams higher than two feet, on any of the fluvial waters of the state, was repealed in 1872, ch. 433, § 8. As to fishing in the canals, and in certain lakes, see 1873, chs. 381, 435 and 436.



such work, over and above the cost of reconstructing the lock or locks on the old plan, shall be paid out of moneys appropriated by this act for the enlargement of the Erie canal; the balance of the cost thereof shall be charged to ordinary repairs.

§ 366. (*Same ch.*, § 2.) The rule established in the preceding section, in relation to locks, may be applied to all structures on the Erie canal; whenever, in the opinion of the canal board, the interests of the state, in reference to the enlargement and improvement of the Erie canal, renders such work necessary: provided the commissioners of the canal fund have in their hands moneys appropriated by the legislature sufficient to pay the additional expense, beyond the sum which would be required for the ordinary repairs, in building the structures on the original plan.<sup>1</sup>

Structures.

## CAYUGA INLET.

§ 367. (1852, *ch.* 246, § 1.) The canal commissioners are hereby authorized and required to take charge of so much of the navigable waters of the Cayuga inlet, as are now subject to canal tolls, and to exercise the same power and supervision over them as they are by law authorized and required to exercise over other canals of this state; and shall cause to be removed such obstructions therefrom, and make such improvements therein, as may from time to time be necessary to pre-

Canal commissioners to take charge of portion of waters of Cayuga inlet.

<sup>1</sup> MISCELLANEOUS NOTES—ERIE CANAL.

1847, ch. 286, relates to the duties of the canal commissioner in draining the Jordan level of the old Erie canal.

1868, ch. 672, relates to the protection of the highway in the town of Fabius, along the outlet of De Ruyter reservoir.

For laws relating to Fish creek feeder and to furnish an additional supply of water to the Rome level, see 1869, ch. 877; 1870, ch. 767, and 1872, ch. 343, and canal board proceedings in those years.

1851, ch. 179, relates to waters of Mill creek, Schenectady.

As to Hughes steam dredge, see 1870, ch. 767; 1871, ch. 715; 1873, ch. 785.

As to Mohawk, Ilion and Frankfort Horse R. Rs., see 1873, chs. 397 and 430.

As to draining Cayuga marshes, see 1853, ch. 178. Ch. 266 of 1861, prohibited the making of further contracts. For damages, see 1868, ch. 520.

For Oriskany feeder, see canal board proceedings, 1866; May 18th, 1871, pages 132, 249, and canal commissioners' report of De Witt Clinton and others in 1817, and 1872, pages 54 and 141.

For Cazenovia lake, see canal board proceedings July, 1855, August 27th and October 14th, 1863, and 1872, pages 86, 91, 98 and 161, and canal commissioners' report, 1873, p. 97.

serve and keep the channel of said inlet of sufficient depth and capacity to admit the passage of any boats or water craft which may navigate the Erie canal.

Money  
expended  
not to ex-  
ceed tolls.

§ 368. (*Same ch.*, § 2.) The treasurer is hereby authorized and required to pay on the warrant of the comptroller such sum or sums as may from time to time be required to effect the purposes of this act, from any moneys in the treasury not otherwise appropriated, but such sum shall not at any time exceed the aggregate of tolls heretofore collected together with the amount which may be hereafter collected from boats or property passing through said channel.<sup>1</sup>

#### THE CAYUGA AND SENECA CANAL.

Navigation  
to be im-  
proved.

§ 369. (1844, *ch.* 313, § 2.) The canal commissioners are hereby authorized and required to improve the navigation of the Cayuga and Seneca canal by lowering the upper or lake level of said canal one foot, and so as to give at all times four feet of water in said level, removing the obstructions at the head of the outlet, enlarging the channel so as to afford a free discharge of the surplus waters of the lake, extending the lake level to Waterloo, and regulating the discharge of water at that place.<sup>2</sup>

Duty of  
commis-  
sioners.

§ 370. (1857, *ch.* 479, § 1.) The canal commissioners are hereby authorized, in excavating the work for the enlargement of the Cayuga and Seneca canal, to excavate that part thereof lying next westerly of the upper lock in the village of Water-

<sup>1</sup> See Laws 1835 *ch.* 202; 1840, *ch.* 316; 1845, *ch.* 101, and 1847, *ch.* 251. Since 1859 special appropriations and directions for work on Cayuga inlet have been made nearly every year in the general appropriation acts.

As to tolls, see *post*, § 501, and note.

<sup>2</sup> This act also repeals *ch.* 302 of 1840, and *ch.* 212 of 1841, "for improving the Cayuga and Seneca canal."

As to rebuilding locks on the Cayuga and Seneca canals, see 1836, *ch.* 453, and 1847, *ch.* 348.

As to damages, releases, etc., for the enlargement of this canal, see canal appraisers' report, 1869, p. 9, and map.

For Ovid street bridge, Seneca Falls, see canal board proceedings, 1869, p. 257.

As to removal of obstructions from the outlet of Cayuga lake, and dredging the channel of Seneca river above and below the aqueduct, see Laws of 1858, *ch.* 179; 1862, *ch.* 465; 1868, *ch.* 304; 1870, *ch.* 492; 1872, *chs.* 781 and 850, and 1873, *ch.* 760. Also, canal commissioners' report, 1871, p. 101; 1872, p. 109, and canal board proceedings, 1872, p. 145.

loo, to where the same intersects the Seneca river, and to excavate the said river and canal into the Seneca lake, at the village of Geneva, at the northeast corner of the said lake, to the uniform depth of nine feet below the surface of the water, as now maintained by the state dam at Waterloo, and of such width as they shall deem necessary, not exceeding the width required by law for the enlargement of said canal.

§ 371. (*Same ch.*, § 2.) The canal commissioners are hereby directed and required, after the excavation of the canal and river in the first section of this act mentioned is completed, and time given to see the effect thereof on the water in said lake, to ascertain and determine a point in said lake to which the water thereof shall be allowed to discharge itself in the ordinary way, and be there holden for use, without injury to the rights of the owners of land at the head of and on the shore of said lake. Said commissioners shall cause one or more permanent monuments to be erected in said lake at the point so ascertained, and which said point shall be distinctly marked thereon, and shall cause levels to be taken to permanent objects on the shore of said lake, and a record of the same to be made by which said point may be hereafter known. The point so determined and marked shall be the limit to which the waters from said lake shall be permitted to flow and discharge themselves to waste; and it shall be the duty of the said canal commissioners, whenever and as often as the water of said lake shall have subsided to the point so marked and determined, to hold the same there for use; and said commissioners shall make and maintain such works as shall be necessary to effect that object. But nothing in this act shall be so construed as to authorize or permit the state dam at Waterloo to be raised above its present height.<sup>1</sup>

Canal commissioners to cause monuments to be erected in Seneca lake.

§ 372. (1867, *ch.* 752, § 1; *amended* 1868, *ch.* 329, § 1.) The canal commissioners are hereby authorized to raise the state dam at Waterloo to, and maintain the same at a height not exceeding the height of the original state dam at that place, but so as not to raise the waters of Seneca lake above the natural height of the waters of said lake. \* \* \*

State dam, Waterloo, to be raised.

<sup>1</sup> See concurrent resolution, 1862, p. 1001, as to height of Waterloo dam

<sup>2</sup> The remainder of this section relates to the height of a new iron bridge over Seneca Lake outlet, and is amended in 1868, by *ch.* 329, § 1.

§ 373. (*Same ch.*, § 3.) No claim shall be made or entertained for any damages to land or property by reason of restoring the said dam to its original height, by the provisions of this act.

§ 374. (1873, *ch.* 766, § 1.) \* \* \* For constructing a dam at Waterloo, which shall be constructed during the year eighteen hundred and seventy-three, the sum of fifteen thousand dollars, which was appropriated for the construction of said dam by act, chapter three hundred and forty-three, laws of eighteen hundred and seventy-two, and the further sum of twenty-five thousand dollars hereby appropriated shall be applied to the construction of a permanent tight dam in the Seneca river, at or near the site of the present state dam at Waterloo, and to the extension of the same across the raceways on the south bank of said river. The permanent waste or spill-way of said dam, to be the same height as the present one except across the raceways on the south side of the river where the waste shall be three feet below the top of the main dam, with ample flood-gates therein, to discharge the surplus water into the main channel of said river, and such fixture shall be constructed on top of said spill-way as can be readily removed to give free vent to floods, and which shall be closed, and no water permitted to waste over said dam after the water in said lake shall have subsided to the original natural height thereof. When deemed necessary by the canal board, breast-walls or weirs of the same height at the spill-ways on the south side of the river shall be constructed in front of all raceways drawing water from the said level, so that thereafter no water can be drained from the Cayuga and Seneca canal, or from the Seneca river, where used for such canal for hydraulic purposes, except over the top of such weirs, and shall be built of solid masonry without apertures therein, and of such height as is necessary to maintain seven feet depth of water in the canal. The balance of the foregoing appropriations not required to construct said dams shall be applied in deepening the prism of the canal as contemplated by act, chapter four hundred and seventy-nine, laws of eighteen hundred and fifty-seven.<sup>1</sup> \* \* \*

Breast  
walls, etc.

<sup>1</sup> The provision in ch. 343 of 1872, was as follows:

"Fifteen thousand dollars \* \* \* for building such dam, bulk-heads and other works at or near the site of the present state dam at Waterloo, as the canal board may deem necessary for the uniform maintenance of navi-

## BALDWINSVILLE DAM, ETC.

§ 375. (1850, *ch.* 153, § 1.) The canal commissioners shall cause the navigation of Seneca river to be extended and maintained from where the navigation ceases, below the canal and lock erected by Stephen W. and Harvey Baldwin, to deep and navigable water in the pond created by a dam erected across said river, by said Baldwins, at Baldwinsville, in the county of Onondaga.<sup>1</sup>

Navigation  
of Seneca  
river.

§ 376. (*Same ch.*, § 7.) The canal commissioners are hereby required to cause permanent monuments of stone to be set up, one on each of the shores of the Seneca river above said dam at Baldwinsville, to designate the height, that by the original charter to Jonas C. Baldwin in the year 1809, he was authorized to construct said dam; a description of such monuments shall be filed in the office of the town clerks of the towns in which such monuments are erected, and such description shall be recorded by such town clerks in the books of town records, and the like description shall be filed and recorded in the office of the canal department. It shall be lawful to maintain the dam now existing, or hereafter to be erected, to the height of such monuments, and no higher; and any person raising said dam higher than such monuments, by flush boards or any other means shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars, or imprisonment in the county jail of Onondaga county, not to exceed three months, or both, in the discretion of the court; and it shall be lawful for any person or persons to enter upon such dam and remove said flush boards or other addition to the height of said dam.<sup>1</sup>

Dam at  
Baldwins-  
ville.

Not to be  
raised  
higher  
than  
monu-  
ments  
designate

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gation, having due regard to the rights of the owners and occupants of hydraulic privileges on the Seneca outlet.

Said dam shall be built in such manner and of such materials as shall be approved by the canal board, and sufficient to restore and maintain the waters of Seneca lake to their original natural height, but not above said natural height; and the canal commissioners shall construct such other works and erections as may be necessary for such purpose, and to carry into effect chapter 479 of the Laws of 1857, to such extent as they shall deem meet, and also remove all bars and obstructions in the channel of the Seneca outlet or river and the canal above the upper lock at Waterloo to the depth required by said act, so far as they shall deem meet."

<sup>1</sup> See Laws 1809, *ch.* 54; 1827, *ch.* 192, and as to changing the location of a portion of the canal, rebuilding locks, etc., 1863, *ch.* 479.

Flush-boards.

§ 377. (1872, *ch.* 827, § 1.) Any person interested in the navigation of the Baldwinsville canal, is hereby authorized to put flush boards on the Baldwinsville dam, whenever the canal commissioner in charge deems it necessary for the purpose of improving the navigation of said canal, provided that the state shall in no manner be made liable for any damage to property arising from said act, and provided further that nothing herein contained shall be construed in any manner to affect the provisions of section seven of chapter one hundred and fifty-three, of the laws of 1850, or to authorize the raising of said dam higher than is allowed by said chapter one hundred and fifty-three of the laws of eighteen hundred and fifty.

Dam to be maintained.

§ 378. (1850, *ch.* 153, § 8.) The canal commissioners shall maintain the said dam across the Seneca river at Baldwinsville, for the purpose of improving the navigation of said river, and the locks and canal to be maintained at the same place, and for that purpose shall appropriate and use so much of the water of said river as shall be necessary for such purpose, and no more, and they shall permit the surplus water, if any, to be drawn from said dam and canal for hydraulic purposes, in such manner as they shall prescribe, and all repairs to said dam necessary for hydraulic purposes shall be made by the owners of water rights, and all gates, weirs, raceways and conduits constructed for the purpose of drawing water from said dam or canal, shall be made under the direction of the acting canal commissioner, at the expense of the party using the same.

Surplus water of.

Baldwinsville canal subject to canal laws.

§ 379. (*Same ch.*, § 9.) The laws of this state relating to the navigation of canals, and all regulations of the canal board relating thereto, shall apply to the canal and river navigation hereby created.

Baldwinsville dam to be rebuilt of stone.

§ 380. (1869. *ch.* 677.) The canal board are hereby authorized and directed, whenever, in their judgment, it shall become necessary to rebuild the dam at Baldwinsville, on the Seneca river, which is necessary to the navigation of the Baldwinsville canal, to rebuild such dam of stone and in such manner as shall, in the judgment of the canal board, render such structure permanent, and at all times reliable for the purpose of naviga-

tion on said canal; the expenses of such work to be paid out of any moneys appropriated, or to be appropriated, for ordinary or extraordinary repairs on the middle division of the canals of this state.

## OSWEGO CANAL.

§ 381. (1865, *ch.* 470, § 1.) The canal board are hereby authorized, whenever, in their judgment, it shall become necessary to rebuild any of the dams on the Oswego river, which are necessary to the navigation of the Oswego canal, to rebuild such dams of stone, and in such manner as shall, in the judgment of the canal board, render such structures permanent, and at all times reliable for the purposes of navigation of said canal; the expenses of such work to be paid out of any moneys appropriated or to be appropriated for ordinary or extraordinary repairs on the middle division of the canals of this state.<sup>1</sup>

Dams on  
Oswego  
river to be  
rebuilt  
of stone.

## CROOKED LAKE CANAL.

§ 382.. (1847, *ch.* 249, § 1; *modified* 1848, *ch.* 162.) The canal commissioners are authorized to rebuild the locks on the Crooked Lake canal, in the same manner as those heretofore rebuilt, whenever they shall judge it necessary to insure its safe navigation; and the [treasurer, on the warrant of the auditor, is] authorized to pay the cost thereof from the moneys appropriated to the ordinary repairs of the canals.<sup>2</sup>

Crooked  
Lake  
canal,  
locks on,  
etc.

## CHEMUNG CANAL.

§ 383. (1864, *ch.* 232, § 1.) When it shall become necessary to rebuild from the foundation any of the locks on the Chemung canal and feeder, it shall be the duty of the canal commissioners, and they are hereby directed to construct and build such locks of timber, and of the same dimensions as the enlarged locks on the Erie canal.

Chemung  
canal,  
locks on.

---

<sup>1</sup> Ch. 475 of 1864, authorized the canal commissioners to rebuild the dam at Phenix, and the Horse Shoe dam, on the Oswego river, "at no greater height than to maintain seven feet of water in the prism of the canal on the levels above these dams, and to construct said dams of stone."

§ 2, as amended, 1865, *ch.* 752, provides for building a berme bank from lock number one to Horse Shoe dam.

As to height of the Phenix dam, see Concurrent Resolution, 1862, p. 1001, and Canal Board Proceedings, 1870, p. 66.

<sup>2</sup> See 1855, *ch.* 570; 1859, *ch.* 449; 1 Hill, 279; reversed, 7 Hill, 357.

Expense,  
now paid.

§ 384. (*Same ch.*, § 2.) It shall be the duty of the canal commissioners to cause accurate estimates to be made of the cost of rebuilding said locks of the present dimensions, and also of constructing the enlarged locks, and whatever the expense of such enlarged locks shall exceed the estimated costs of the present dimensions shall be paid out of the extraordinary repair fund ; and the residue of such costs shall be charged to ordinary repairs.<sup>1</sup>

Conne-  
tion of  
Junction  
and Che-  
mung  
canals.

§ 385. (1854, *ch.* 227, § 1.) The canal board are authorized to permit the connection of the canal of the Junction Canal Company, at its westerly termination, in the village of Elmira, as now constructed, with the Chemung canal, and to regulate and prescribe the manner of such connection, and the structures to be made by the said company for the passage of water from the Chemung canal to the said Junction canal. Such structures, when completed, and the volume and flow of water from the Chemung canal to the Junction canal, shall be at all times under the exclusive control of the canal commissioners ; and the said company shall not at any time, upon any claim or pretext, draw any water from the Chemung canal contrary to the authority and direction of the canal commissioners.

Damages.

§ 386. (*Same ch.*, § 2.) All damages which shall or may be sustained by the owner of any property whatever, by reason of the increased quantity of water diverted from the Chemung river passing into the said Junction canal for the necessary use thereof, shall be paid by said company to the owners of said property, upon the appraisal of three commissioners, to be appointed by the supreme court in the manner provided by the general railroad act, and unless paid, the right of the said corporation to use or draw water from the Chemung canal shall thereafter cease and determine.

Powers.

§ 387. (*Same ch.*, § 3.) The said corporation shall not be prejudiced, nor its rights, powers or privileges forfeited, or in any manner impaired, by reason of having constructed a portion of its canal through that part of the Chemung valley lying within the state of Pennsylvania, but the same are retained and hereby confirmed, the same as though said canal had been constructed wholly within the territory and jurisdiction of this state.

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<sup>1</sup> Amending ch. 211, of 1858.



§ 388. (*Same ch.*, § 4.) Nothing in this act contained shall be construed or taken to give any authority or privilege to take any water from the Chemung canal, to the prejudice of the navigation or the present business thereof, or in any manner to abridge or impair the control and authority of the state over said Chemung canal, and the right and interests connected therewith, as they now exist; and the water drawn from the Chemung canal by virtue of this act shall be taken and used for the purposes of navigation, and for no other use or purpose whatever.

Rights of  
state re-  
served.

§ 389. (1872, *ch.* 785, § 1.)<sup>1</sup> From and after the passage of this act the city of Elmira is authorized to use that portion of the Chemung canal situated south of its junction with the Junction canal at Elmira to the southern terminus of the said Chemung canal, or so much of said portion as may be determined by the common council of said city, for a public street, and to fill in, sewer, improve and otherwise adapt the same for a public street. But nothing in this act contained shall be construed as conveying from the state, or otherwise disposing of the fee in the lands occupied by said portion of the said Chemung canal.

Elmira  
may use  
portion of  
canal for  
a street.

§ 390. (*Same ch.*, § 2.) The bridges and structures belonging to the state upon the said portion of the said Chemung canal shall be removed by the state as soon as practicable after the common council of the city of Elmira shall have determined to accept the provisions of this act, by declaring said portion of said canal a public street; and said bridges and structures shall be applied to public use, as the same may be required from time to time.

Structures  
to be re-  
moved.

§ 391. (*Same ch.*, § 3.) The common council of the said city of Elmira may declare said portion of said canal a public street, and, except as against the state, the same shall be deemed a public highway for all purposes; and the same may be filled up, graded, or otherwise improved at the expense of the city, in such manner as may be determined by the said common council, or in accordance with the provisions of the charter of the said city.

To be de-  
clared a  
public  
highway,  
except,  
etc.

<sup>1</sup> See canal board proceedings, 1872, p. 22.

Railroad  
may build  
draw-  
bridges  
on Che-  
mung  
canal.

§ 392. (1873, *ch.* 834, § 2.) The Utica, Ithaca and Elmira Railroad Company are hereby authorized to extend and construct their railroad from their present road in Horseheads, in the county of Chemung, to and into the city of Elmira, in said county, and for this purpose are authorized to build their railroad across the Chemung canal, as may be necessary, and to construct and operate, at their own expense, suitable swing or turn-table draw-bridges for the passage of trains of said railroad over said canal; and bridges to be constructed, as to time and manner of building, the same as the canal commissioner in charge of that section of the canal shall, in the interest of the state, require; and said bridges, when completed, shall be under the control and management of said canal commissioner in charge for the time being, but all the expenses of erecting, maintaining and operating said bridges shall be provided for and paid by said railroad company. In building said bridges over said canal, no pier or obstructions shall be placed in the prism of said canal.

May use  
portion of  
canal in  
Elmira  
under  
direction  
of com-  
missioner.

§ 393. (*Same ch.*, § 3.) The Utica, Ithaca and Elmira Railroad Company are hereby authorized, by and with the assent of the common council of the city of Elmira, given by the affirmative vote of two-thirds of all the members of said common council, and upon such terms and conditions as said railroad company and the city of Elmira may mutually agree upon, to fill in and use for the purposes of their railroad, having first laid a good and sufficient sewer for the purpose of drainage, that portion of said canal, or so much thereof as they may desire, situated south of the junction with the Junction canal, at said city of Elmira, to the northern boundary of the buildings now situate on said canal, on the north side of Water street in said city of Elmira, subject to the terms and conditions of chapter seven hundred and eighty-five of the laws of eighteen hundred and seventy-two, entitled "An act authorizing the city of Elmira to use a portion of the Chemung canal for a public street, and for other purposes," passed May twenty, eighteen hundred and seventy-two; provided that, as to all extensions of road by this act authorized, the said company shall be subject to the provisions of chapter one hundred and forty of the laws of eighteen hundred and fifty, and acts amendatory thereof; and further provided that, if the building and maintaining of said railroad along or upon said canal or property of the state by the change from a canal to a rail-

road as herein authorized, will impair the value of private property adjoining thereto, said railroad company shall be liable in damages therefor to the party aggrieved; the amount of such damages to be ascertained and paid in the same manner as is now provided by law for ascertaining and paying damages for lands taken for railroad purposes, except that any party or party<sup>1</sup> deeming himself or themselves aggrieved, may petition for the appointment of the commissioners for the purpose aforesaid; and all the work upon said railroad along said canal shall be constructed, as to the time and manner of doing the same, as the canal commissioner in charge shall, in the interest of the state, require and direct.

§ 394. (*Same ch.*, § 4.) In case the common council of the city of Elmira refuses or neglects to pass an ordinance signifying their acceptance of the conditions and privileges secured to said city, under the act of chapter seven hundred and eighty-five of the laws of eighteen hundred and seventy-two, within thirty days from the passage of this act, the said Utica, Ithaca and Elmira Railroad Company is hereby granted and empowered to exercise all the rights and privileges granted to the said city of Elmira under section three of said act of eighteen hundred and seventy-two, for the purposes of their railroad, subject to the terms and conditions of this act hereinbefore contained; provided that the said railroad company shall construct and maintain a suitable sewer under such portions of said canal as may be occupied by the railroad, and allow the said sewer to be used by the state authorities as an outlet for the sewer leading from and used by the state reformatory, and the said reformatory commissioners are hereby authorized and directed to continue the said sewer to the outlet of the canal at Water street, in the city of Elmira.

May  
acquire  
the rights  
of city  
of Elmira

## CHENANGO CANAL.

§ 395. (1846, *ch.* 98, § 5.) The managers of the said asylum (*the State Lunatic Asylum at Utica*) are authorized, under the direction and subject at all times to the control of the acting canal commissioner having charge of the Chenango canal, to use the surplus water, discharged around or through the fifth lock on said canal, to operate a pump, to supply said asylum with water from said canal or from Nail creek, in case the said

Utica  
asylum  
to use  
waters of  
Chenango  
canal.

<sup>1</sup> So in the original.

commissioner shall be of opinion that the same can be done without detriment to the navigation of said canal.

State  
lunatic  
asylum  
to have  
water and  
ice, but  
subject to  
commissioner in  
charge.

§ 396. (*Same ch.*, § 6, *as amended by 1859, ch. 457, and 1867, ch. 564.*) The managers of the said asylum shall have control of the water in the levels of the Chenango canal, from the fifth to the tenth locks of said canal, both inclusive, and of the water discharged from said levels and locks for the purpose of supplying said asylum with water and ice; and it shall be the duty of all officers having charge of said canal, and of the persons employed by them, to do all things necessary, and which may be required by said managers, for the supply of said asylum with water and ice as aforesaid; provided always that the said managers in all their acts in reference to said levels, and locks, and water, shall be at all times subject to the direction and control of the acting commissioner having charge of said canal; and that nothing shall be done or permitted by said managers, which shall obstruct or interfere with the navigation of said canal, or which shall not first receive the sanction of the commissioner in charge, and all persons, except such as are in the employ of the state, and such as are engaged in the navigation of the canals, are hereby prohibited from preventing, obstructing or in any way interfering with the said levels, locks and water of the canal, so as to prevent the free and full use thereof by the said asylum, and from doing any thing to injure the quality of said water for said use; and any person who shall, in any way, willfully violate this prohibition, shall be guilty of a misdemeanor.

Duty of  
commissioner.

§ 397. (*Same ch.*, § 7, *as amended by 1859, ch. 457.*) It shall be the duty of the said acting commissioner to do whatever may be necessary to be done by him, to carry the preceding section into effect, so as in the best way to fulfill its intention of supplying said asylum with water and ice.<sup>1</sup>

Bingham-  
ton may  
use a por-  
tion of the  
Chenango  
canal for a  
street.

§ 398. (1872, *ch. 787*, § 1.) On and after the first day of September, eighteen hundred and seventy-two, the city of Binghamton is authorized to use that portion of the Chenango canal between the north end of Prospect avenue in the said city and

<sup>1</sup> *Chenango canal.*— See canal board proceedings, 1872, p. 22, as to that portion between its junction with the Chenango extension and the Susquehanna river. 1865, *ch. 593*, relates to the duty of commissioner as to embankments, highways, etc., Eaton and Nelson Brook reservoir.

the south side of Susquehanna street for a public street, and to fill in and otherwise adapt the same for a public street. But nothing in this act contained shall be construed as granting away from the state of New York the fee in the lands occupied by the said portion of the canal, or as conveying any property in the materials used in the construction of said canal, nor as authorizing the removal of any portion of any building erected on canal land, with the consent of the state, express or implied, except by the regular method provided in title eight in the charter of the city of Binghamton.<sup>1</sup>

§ 399. (*Same ch.*, § 2; *amended* 1873, *ch.* 711, § 1.) The Bulk-head. bridges and structures belonging to the state, upon said portion of the said Chenango canal, shall be removed by the state as soon as practicable, after the common council of said city shall have determined to accept the provisions of this act by declaring said portion of said canal a public street. If, in the opinion of the canal commissioner in charge, it shall be found necessary to construct the bulk-head mentioned in section three of the said chapter seven hundred and eighty-seven of the laws of eighteen hundred and seventy-two, the construction of the said bulk-head shall be without expense to the state.

§ 400. (*Same ch.*, § 3; *amended* 1873, *ch.* 711, § 2.) The common council of the said city of Binghamton may declare said portion of said canal, or a part thereof, a public street, and, except as against the state, the same shall be deemed a public highway for all purposes, and the same may be filled up, graded or otherwise improved at the expense of the said city, or at the expense of parties who may voluntarily contribute thereto, or both. May become a public highway, except, etc.

§ 401. (1873, *ch.* 835, § 1.) For the purposes of preserving the embankments and mechanical structures on that part of the Chenango canal extension which lies south of the Susquehanna river, and maintaining farm crossings thereon, without expense to the state, the Binghamton, Dushore and Williamsport Railroad Company is hereby authorized, with the consent of the canal board, to lay a railroad track on the tow-path of that part of the said Chenango canal extension which lies south Binghamton, Dushore and Williamsport Railroad may lay track on tow-path with consent of canal board.

<sup>1</sup> As to abandonment of Evans' basin, in Binghamton, see canal board proceedings, 1871, p. 185.

Con-  
ditions.

of the Susquehanna river, or such portion thereof as said company may deem available for such purpose, upon condition that said railroad company shall keep the said tow-path so used in good repair, and shall remove said railroad track from said tow-path whenever the said canal extension shall be completed and ready for navigation. And whether said railroad company shall occupy the river bank of said canal, or any other portion thereof, said company shall, so long as it uses and occupies said canal, protect and maintain its embankments, culverts, waste-weirs and other mechanical structures, on that portion so used and occupied, against the encroachments of the river, and any and all causes of damage. And shall construct and maintain, under the direction of the canal commissioner in charge, all the farm crossings recognized and designated, or which may be recognized or designated by the canal commissioners, not already constructed, and keep in repair the bridges already built by the state, and shall make and maintain fences, as required by the general railroad laws of the state; and said railroad shall be assessed and shall pay taxes upon that portion of the said canal lands which may be used by said railroad, in the same manner as though said road were the owner of the lands so used or occupied; said taxes shall be levied and collected in the same manner as other taxes are levied and collected of said company. Said company shall be liable to pay any and all damages which may be sustained by floods or otherwise upon such portion of such canal as shall be occupied by said company.

When  
rights of  
railroad  
to cease

§ 402. (*Same ch.*, § 2.) In case said railroad shall fail for two years to occupy the said tow-path of said canal extension, or any part thereof, with its tracks, its right to lay its tracks upon the part not so occupied shall then cease. The said railroad company is hereby authorized and empowered to change the line of its road so as to extend the same along the valley of the Susquehanna river to the valley of the Wappasening creek in the town of Nichols in the county of Tioga, and then up the valley of the said creek to the state line of Pennsylvania, with all the rights, powers and privileges provided in the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, and the acts amending the same. And in case said railroad company shall fail to construct a single track of their road over their line so changed, from Binghamton afore-

said to said state line in the valley of the Wappasening creek, for two years after the passage of this act, to meet a railroad to be constructed from the Pennsylvania Northern Central Railroad along the valley of the Towanda, Wysox and Wappasening creeks, then the rights and privileges of the said company under this act, and each and every of them, shall cease and determine.

§ 403. (*Same ch.*, § 3.) It shall be the duty of the canal board, when the said canal extension is completed and ready for navigation, to give notice thereof to said railroad company, requiring said company to remove said railroad track from said tow-path, and it shall be the duty of said railroad company to remove the same within thirty days after receiving such notice, under penalty of one hundred dollars a day for each and every day the said railroad company shall neglect to remove said railroad track after the expiration of the said thirty days; said penalties to be sued for and recovered in the name of the people of this state.

Notice of  
removal;  
penalty,  
etc.

§ 404. (*Same ch.*, § 4.) Nothing in this act shall be so construed as to prevent the state from selling said canal, should authority to sell the same at any time be given by the people of the state by an amendment of the constitution; and in case the said railroad company shall not become the purchaser of said canal on a sale thereof by the state, the said railroad company shall immediately deliver possession of said canal to the purchaser, reserving the right to remove the tracks and all other structures built for railroad purposes by said company, and the legislature may at any time alter, amend or repeal this act.

Not to  
prevent  
state  
selling  
canal.

#### BLACK RIVER CANAL, FEEDER, RESERVOIRS, ETC.

§ 405. (1851, *ch.* 181, § 1.) The canal commissioners are hereby authorized and directed to cause examinations and surveys to be made of the lakes at the head of Black river, and if, in their opinion, necessary, also of the lakes on Moose and Beaver rivers, for the purpose of creating, if practicable, reservoirs of sufficient capacity to supply the Black River canal feeder with such quantity of water, during the summer months, as shall be necessary for the supply of the Black River and Erie canals, and as shall give to the Black river, as near

Black  
river  
reservoirs.

as may be, as much water as ordinarily flows therein during the summer months.<sup>1</sup>

To construct  
dams, etc.

§ 406. (*Same ch.*, § 2.) The said commissioners shall cause such dams, bulk-heads, gates and other erections, to be constructed on the streams and lakes flowing into the Black river above the canal feeder dam, or, if such streams and lakes are insufficient to supply the quantity of water necessary for the purposes contemplated in the first section of this act, then the said commissioners are required to cause to be constructed such other dams, bulk-heads and erections on one or both the said Moose and Beaver rivers, as shall be necessary to accomplish the purposes in the said first section specified.

Dams  
made part  
of public  
works.

§ 407. (*Same ch.*, § 3.) The said dams, bulk-heads, gates and other erections shall be, and they are hereby, made part of the public works, and shall be under the control and supervision of the canal commissioners, whose duty it shall be to determine at what season of the year the said dams and gates shall be closed, and at what times and in what quantity the waters from said reservoirs shall be discharged, so that the waters thus reserved shall be let into said Black river, during the summer months, in such manner and in such quantity, as to give, so far as practicable to the inhabitants residing on said river the benefit of said reserved waters, when the same shall be required for use, and such supply shall not be less than the quantity which ordinarily flows in said river, during the summer, provided the supply from said reservoirs will furnish such quantity after supplying the Black River canal and the Erie canal with water.

To appoint  
keepers,  
etc.

§ 408. (*Same ch.*, § 4.) The said commissioners are hereby authorized to employ such number of persons as in their judgment may be required to attend the gates on said dams, whose duty it shall be to attend said gates, and to regulate the flows of water through the same, under such regulations as the canal commissioners may prescribe, subject to the approval of the canal board.

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<sup>1</sup> As to construction of Black River canal and Erie canal feeder, the improvement of Black river from High Falls to Carthage, to make it navigable for steamboats drawing four feet of water, and right to use Lansing's Kill and Mohawk river. See 1836, ch. 157.



**409.** (*Same ch.*, § 5.) Any person who shall willfully open or close any dam or dams, or the bulk-heads, gates or other erections connected therewith, or shall impair or destroy the same without authority from the canal commissioners, shall forfeit the sum of one thousand dollars, to be sued for and collected in any court having jurisdiction thereof; one-half of said sum to be paid into the treasury for the benefit of the canal fund, and the other half to the person who shall prosecute for the same.

Penalties  
for dam-  
aging such  
works.

§ **410.** (*Same ch.*, § 6.) All laws relating to the care and prosecution of the public works of this state, not inconsistent with this act, shall apply to the works hereby authorized to be erected.

§ **411.** (1858, *ch.* 185, § 1.) All that portion of the Black River canal and slack-water navigation in said river, from the entrance of said canal into the Black river, to its northerly termination into the Black river below Lyons Falls, including all the piers, locks and other structures thereto belonging; and also the North Branch and Woodhull reservoirs, with all the dams, chutes, docking, bridges, and all other structures and appurtenances thereunto belonging, together with the pond above the dam, at the head of the Black River feeder, with all the docks, waste-gates, piers, and all other structures connected therewith, may be attached and annexed by the canal commissioners to superintendents section number two Black River canal; \* \* \* .<sup>1</sup>

Certain  
portion  
annexed  
to section  
2, Black  
River  
canal.

§ **412.** (1859, *ch.* 149; *amended ch.* 326.) The sum of forty-nine thousand seven hundred and eighty dollars thereof is hereby appropriated to the completion of so many of the Black River reservoirs as will, with the least expense, restore to the Black river eleven thousand cubic feet of water per minute, being the quantity diverted to the Erie canal, and the residue to the completion of the Black River canal.<sup>2</sup>

Appropriation  
for.

<sup>1</sup> The point between sections 2 and 3, Black river, is 300 feet north of lock No. 109. Canal board proceedings, March 7, 1866.

<sup>2</sup> For temporary appropriation of water before 1851, see 19 Barb. 657. As to claims growing out of this diversion of water, see 1857, chs. 245 and 570; 1858, chs. 350 and 351; 1861, ch. 344 (printed on page 9, laws 1862), and Report of Littlefield and others to the legislature of 1856, Assembly Documents, No. 125, Vol. 4. As to locks, see 1847, ch. 260.

Dam  
across  
Moose  
river.

§ 413. (1872, *ch.* 850, § 1.) \* \* \* For construction of a dam across Moose river at the old Brown's tract forge at foot of Fulton chain of lakes, to raise the water in lakes to supply deficiency on Black river improvement, pursuant to chapter 181, laws of 1851, in dry season, the sum of eighteen thousand dollars, if, in the opinion of the canal board the state is under equitable obligations to construct such dam, and if, in the opinion of said board, it is, under all the circumstances, expedient to do said work, provided the owners of said lakes and lands adjoining release to the state all damages for use of said lakes and damages to land to be flowed in consequence of the construction of said dam.<sup>1</sup>

#### GENESEE VALLEY CANAL.

To raise  
head of  
feeders  
and of  
Oil Creek  
reservoir  
on Gene-  
see Valley  
canal.

§ 414. (1863, *ch.* 342, § 1.) The canal commissioners are hereby authorized to raise the water in Oil Creek reservoir three feet, and define the boundaries of lands for the same at an elevation of six feet above the bottom of the outlet heretofore in use; also to construct a dam across the Ischua creek, at Ischua feeder, at such elevation as may be determined by the canal board. Said commissioners are further authorized to raise and maintain the dams at an elevation of five feet above bottom of canal, across the streams that supply with water that part of the canal designated as the extension of the Genesee Valley canal; said commissioners are further authorized to take possession of all lands necessary to carry this act into effect.

To place  
monu-  
ments of  
stone near  
each dam.

§ 415. (*Same ch.*, § 3.) The canal commissioners are further authorized and required to place fixed and permanent monuments of stone near each dam and of the outlet, for the purpose of determining at any future time the height to which the works mentioned in this act are to be maintained, and furnish with their next annual report, maps and references designating said monuments.<sup>2</sup>

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<sup>1</sup> For resolution of the canal board affirming the equitable obligation to construct a dam across Moose river, see proceedings, 1872, p. 124. For rebuilding Woodhull reservoir and construction of Sand Lake reservoir, see canal board proceedings, 1870, p. 206; 1871, pages 174 and 238; 1872, p. 124, and canal commissioners' reports, 1872, p. 51, and 1873, p. 58.

<sup>2</sup> See canal commissioners' report, 1864, Appendix A, for maps, monuments, etc. Laws of 1864, ch. 170 provides for making a reservoir of Lime

## ONEIDA LAKE CANAL.

§ 416. (1860, *ch.* 46, § 1; *amended* 1862, *ch.* 486, § 1.) Locks on  
Oneida  
Lake  
canal.  
When it shall become necessary to rebuild any of the locks on the Oneida Lake canal, it shall be the duty of the canal commissioners to have such locks constructed of timber, and of the same dimensions as the enlarged locks on the Erie canal, and for the purpose of ascertaining the increase of expense beyond the cost of reconstructing the locks on the old plan, the canal commissioners shall cause accurate estimates to be made of the cost of rebuilding the locks of the present dimensions, and also the cost of constructing the enlarged locks, and such addition shall be paid by the treasurer on the warrant of the comptroller, out of any unappropriated moneys belonging to the general fund; but said locks are not to be rebuilt so long as ordinary repairs above high water mark in the canal will keep them in good navigable condition.

§ 417. (1852, *ch.* 230.) The canal commissioners are hereby authorized to assume the care and maintenance of the draw in the bridge over the Oneida river, at Oak orchard, and appoint some suitable person to attend the same at the expense of the State, to be paid as ordinary repairs of the canals. And hereafter the town of Clay, in the county of Onondaga, and Schroepfel, in the county of Oswego, shall be released from any charge or expense in relation thereto. To appoint  
keeper at  
draw-  
bridge at  
Oak  
Orchard.

§ 418. (1872, *ch.* 850. \* \* \*) The sum of fifty thousand dollars is hereby appropriated to complete the Oneida Lake canal; but no portion of this sum shall be expended unless the canal commissioner can make a contract within such sum, on public notice of letting to the lowest bidder, for all the work necessary to make the said canal and its works and structures safe, and secure good navigation, the modified plan of the work to be determined by the canal commissioner and the state engineer.<sup>1</sup>

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lake, and for using the flood water of Ischua creek. As to feasibility and cost of completing old line from Olean to the river, see Assembly Doc. 1871, Vol. 7, No. 186.

<sup>1</sup> Further appropriation, 1873, *ch.* 766.

## ARTICLE III.

## OF THE APPRAISEMENT OF DAMAGES.

- SECTION 420.** Number of canal appraisers, their duties, oath, etc.
421. Terms of office.
422. Salaries.
423. To be paid out of canal revenues.
424. Allowance for making return to appeals after term of office has expired.
425. To appraise value of private property appropriated for canal purposes.
426. To meet in vicinity of premises and hear evidence.
427. Duties of appraisers, to view premises and take testimony.
428. Appraisers to record claims, allowances and items not allowed, with their reasons.
429. Claims for damages, when to be exhibited.
430. Claims for former damages, when to be exhibited.
431. Canal commissioners and appraisers to issue subpoenas.
432. Their form, returnable in same or adjoining county.
433. Witnesses fees for attendance on appraisers' subpoenas.
434. Penalty for neglect to appear.
435. To notify the canal commissioner in charge, and the claimant, of time and place of meeting; notices, how given; claims may be heard *ex parte* in certain cases.
436. One of the canal commissioners to attend in person, or by agent, and procure the examination of witnesses on the part of the state.
437. Decisions of the appraisers and new trials.
438. Canal commissioners not to vote on appeals in which they have appeared before the appraisers.
439. Each appraiser to attend meetings for appraisal of damages. Two may decide and determine claim.
440. Books, papers, etc., where to be deposited.
441. Books, records, etc., to be removed to the apartment of the canal appraisers.
442. Every decision of appraisers to be entered in books kept for that purpose.
443. Transcript of the entry, signed, to be recorded in the clerk's office where the lands lie.
444. Fee simple of premises appropriated vested in the state.
445. When damages appraised exceed benefits, commissioners to pay excess. In case of appeal, not to pay until final decision is had.
446. Commissioners, engineer, or superintendent of repairs, may fix by agreement, amount of temporary damages in certain cases.
447. Damages for lands, waters or steams, used for temporary purposes, if not settled by agreement, shall be appraised.
448. Proceedings in such cases.
449. Damages for lands overflowed.

**SECTION 450.** To be appraised as in other cases.

- 451. Lands divided by canals to be taken for the state in certain cases.
- 452. Damages appraised as in other cases.
- 453. Land for enlargement of the Erie canal, appraised above its fair value, shall not be taken.
- 454. If a purchase cannot be made at fair prices, the canal to be enlarged within original lines.
- 455. In such cases no boats to stop or land freight or passengers there. Penalty.
- 456. Commutation for farm bridges, if not agreed upon, damages to be appraised.
- 457. Set-off against damages.
- 458. Appraisement as in other cases.

**GENERAL ACT, RULES, ETC.**

- 459. General act authorizing appraisers to hear and determine claims for damages, except those resulting from navigation.
- 460. Claims, when to be filed. Appraisers to employ counsel in behalf of the state.
- 461. Appraisers to prescribe rules, forms and proceedings. To issue subpoenas, punish contempts and issue commission for examination of witnesses out of the state.

**APPEALS, NEW TRIALS, ETC.**

- 462. Appeal from decision of the appraisers to be to the canal board.
- 463. Appeal to be in writing, stating grounds, etc.; how served.
- 464. Appraisers to file transcripts of their decisions within thirty days; appeal must be brought within three months from time of filing.
- 465. Appeals from awards under special acts. Power of canal board.
- 466. Such appeals shall be taken within three months.
- 467. Proceedings relative thereto.
- 468. Notices of appeal may be signed by one or more canal commissioners.
- 469. Return to the appeal to be made in writing with transcript of evidence, allowances and reasons for their decision.
- 470. Canal board to meet to decide appeals; how heard and decided.
- 471. On reversal or modification of an award, reasons to be stated; copy to be filed; may order new trial before appraisers.
- 472. Canal board may grant a rehearing, if applied for within sixty days.
- 473. Certiorari to supreme court from appraisers' award.
- 474. When it shall be brought. Proceedings thereon, appeals, etc.
- 475. Not to prevent an appeal to the canal board in respect to the amount of damages.
- 476. Appraisers to make an annual report to the legislature; its contents.

## OF THE CANAL APPRAISERS, AND THE APPRAISEMENT OF DAMAGES.

Three appraisers to be appointed.

§ 420. (*R. S.*, § 45, *as amended*, 1836, *ch.* 287, § 1, and 1857, *ch.* 538, § 1.) There shall be nominated by the governor, and appointed by him, with the consent of the senate, three officers by the name of canal appraisers, who shall hold their offices for [three] years and until their successors shall be duly qualified, [*and who*] shall be the appraisers of damages, in the cases hereinafter specified. The oath or affirmation of office, taken by the canal appraisers, shall be filed in the office of the secretary of state.<sup>1</sup>

Terms of office.

§ 421. (1857, *ch.* 538, § 1.) The three canal appraisers to be appointed next after the passage of this act shall hold office as follows: one for the term of one year, one for the term of two years, and one for the term of three years, pursuant to the following determination: the commissioners of the canal fund shall meet at the capitol within ten days after such appointment shall be made, and determine by lot, which of said appraisers shall hold his office for one year, which for two years, and which for three years; and the terms of office of such appraisers shall respectively expire as the same shall so be determined by lot, a certificate of which determination shall be filed by said commissioners of the canal fund forthwith in the office of the secretary of state; and there shall be appointed annually thereafter, one canal appraiser in the manner now provided by law, whose term of office shall be for three years.

Salaries.

§ 422. (1872, *ch.* 733, § 2.) \* \* \* For the canal appraisers, for additional compensation for the current fiscal year, to each of them, the sum of three thousand dollars; and from and after the first of October, eighteen hundred and seventy-two, the salary of said officers is hereby fixed at five thousand dollars each, in full of all compensation for their services; \* \* \*

Canal appraisers to be paid out of canal revenues.

§ 423. (1841, *ch.* 238, § 2; *amended* 1848, *ch.* 162.) The compensation provided by law to canal appraisers, the expense of their clerk hire, of postage, of recording transcripts, of the entry of their decisions, and any other expense necessarily incurred by them shall hereafter be paid by the [auditor] out of the canal revenues, and shall be charged to the several canals on whose account such expenses shall be incurred.

§ 424. (*Same ch.*, § 3 ; amended 1848, *ch.* 162.) The commissioners of the canal fund may allow and [the auditor] pay out of the canal revenues, to any person who may have been a canal appraiser, a reasonable compensation for making returns to appeals after he shall have ceased to hold such office.

Allowance for making returns to appeals.

§ 425. (*R. S.*, § 46.) When any lands, waters or streams, appropriated by the canal commissioners, to the use of the public, shall not be given or granted to the state, it shall be the duty of the appraisers to make a just and equitable estimate and appraisal of the damages, and benefits, resulting to the persons interested in the premises so appropriated, from the construction of the work, for the purpose of making which such premises shall have been taken.

Their duty.  
3 Kern.  
24 ; 11 N.  
Y. 398 ; 6  
Hill, 359.

§ 426. (*R. S.*, § 47.) It shall be their duty, for that purpose, to meet at such times and places as they may deem necessary, and as nearly in the vicinity of the premises, as conveniently may be, and hear such proper and relevant evidence as shall be offered ; and they are, for that purpose, empowered to administer oaths to witnesses.

To meet, hear evidence, etc.

§ 427. (1829, *ch.* 368, § 1.) It shall be the duty of the canal appraisers personally to view the premises on which damages shall be claimed, and to meet at such times and places as they may deem necessary, and as nearly in the vicinity of the premises as conveniently may be, and hear such proper and relevant evidence as shall be offered, and direct the attendance of witnesses in behalf of the state, if, in their opinion, the interest of the state shall require it ; and they are, for that purpose, empowered to administer oaths to witnesses ; and willful swearing before the said appraisers is hereby declared perjury.

Powers and duties.

§ 428. (*Same ch.*, § 2.) It shall be their duty to enter in a book, to be kept for that purpose, the nature and extent of all claims on which they shall pass, the items on which allowances are made, and the several amounts allowed, and the items on which no allowance is made ; and they shall enter at length the testimony taken, and the grounds and reason for their decision.

Record of claims and decisions.

Claims  
for dam-  
ages, when  
to be filed.  
9 Barb. 466;  
15 lb. 627;  
4 Comst. 66.

§ 429. (*R. S.*, § 48; *amended* 1866, *ch.* 836, § 5.)<sup>1</sup> Every person interested in premises so appropriated, and every person who shall claim to have sustained damages by reason of the temporary appropriation of his lands or waters, or any injury caused by the canals of this state, or the works connected therewith, if he intend to claim such damages, shall within one year after such premises, lands or waters have been taken permanently, appropriated or temporarily occupied, and within one year after jurisdiction shall be conferred upon the canal appraisers by the legislature, to hear such other injury, file in the office of the canal appraisers a detailed statement of his claim in writing, signed by himself, his guardian or his agent, specifying in as particular a manner as the nature of the case will admit, the extent of his interest in the premises appropriated, and the nature and amount of damages, which claim shall be verified in the same manner as pleadings are now required by law to be verified.<sup>2</sup>

Former  
damages.  
15 Barb.  
643; 1  
Kern. 308;  
9 Barb.  
496.

§ 430. (*R. S.*, § 49.) No claim for damages, for premises that shall have been appropriated to the use of a canal, at any time before this chapter shall be in force, shall be received by the appraisers, unless it shall be exhibited within one year after this chapter shall become a law (*January 1st*, 1828); and the premises so appropriated shall be deemed the property of the state; and no claims, other than those so exhibited, shall be paid without the special direction of the legislature.

Subpœnas.

§ 431. (1829, *ch.* 48, § 5.) Either of the canal commissioners, or appraisers of damages, may issue subpœnas to compel the attendance of witnesses before the board of appraisers to give testimony in relation to any matter depending before such board, under the provisions of article third, of title ninth, of chapter ninth, of the first part of the Revised Statutes.

Form of.

§ 432. (*Same ch.*, § 6.) Such subpœnas may be in the same form, as near as may be, as subpœnas issued by justices of the peace, and may require the attendance of any person residing

<sup>1</sup> The amendment is made to § 84, *R. S.*, Art. 3, etc. There is no § 84 in Art. 3. It was evidently intended to be made to *R. S.*, § 48, which is printed as § 84, in the 5th Ed. *R. S.*

<sup>2</sup> See report of attorney-general, canal board proceedings, 1872, page 100, for a construction of this section, upon claims barred by lapse of time.



in the county where the same may be returnable, or in the adjoining county.

§ 433. (1836, *ch.* 287, § 2.) Every person appearing as a witness in pursuance of the command of any subpoena issued by a canal appraiser, shall be entitled to the same fees as are allowed to witnesses for attending courts of record in civil suits, to be paid by the claimants for damages, if subpoenaed on their part, or by the canal commissioners, if subpoenaed on the part of the state.

Witness fees.

§ 434. (*Same ch.*, § 3.) Every person neglecting to appear, in pursuance of the command of any such subpoena, without good cause for such non-appearance, or when appearing, shall refuse to be sworn or to testify, shall forfeit the sum of fifty dollars, to be recovered with costs of suit before any court having cognizance thereof. If subpoenaed by the claimant for damages, to be sued for and recovered by such claimant, in his name and for his use; if subpoenaed to attend in behalf of the state, to be sued for and recovered in the name of the people of this state, for the benefit of the canal fund.

Penalties for non-attendance.

§ 435. (*Same ch.*, § 4; amended 1866, *ch.* 836, § 6.) It shall be the duty of the canal appraisers to notify the acting canal commissioner in charge of the line of canal on which damages are to be appraised, of the time and place of the meeting of the appraisers to view the premises and take testimony in relation to such appraisals. Such notice shall be given by indorsing the same in an envelope and depositing it in the post-office, directed to such commissioner at his office, at least eight days prior to the time of such meeting, and they shall also give the like notice to the claimant, if the residence of such claimant shall be known to the appraisers; and in case any claimant shall neglect or refuse to bring his claim to a hearing before the appraisers, at the time and place specified in such notice (unless upon good cause shown, excusing such default), the appraisers shall have power to examine the premises and hear said claim *ex parte*, and to decide the same, and to make such award therein as shall appear to them just.

Canal commissioner to be notified.

§ 436. (*Same ch.*, § 5; amended 1855, *ch.* 535, § 4.) It shall be the duty of one of the acting canal commissioners, in person or by agent, to attend in behalf of the state, before the canal appraisers, and procure or request the attendance and

Duty of canal commissioner.

examination of witnesses on the part of the state, and if, in the opinion of the canal appraisers, the interests of the state require it, they may employ counsel on behalf of the state, on the hearing of claims for damages before them.<sup>1</sup>

Decisions  
and new  
trials.

§ 437. (*Same ch.*, § 6; amended 1866, *ch.* 836, § 7.) It shall be the duty of the canal appraisers to decide upon claims for damages from the information obtained by them in viewing the premises, and from the evidence, if any, received by them from witnesses; and the said appraisers shall have power, upon application to them by the claimant or by the canal commissioners, within thirty days after the award shall have been recorded in the office of the appraisers, and notice thereof given to the claimant and the commissioner, to order a new trial in cases of surprise or newly-discovered evidence, or in cases where material errors have been committed on the first hearing.

Canal com-  
missioner  
not to vote  
on appeals.

§ 438. (*Same ch.*, § 8.) No canal commissioners shall hereafter be associated with the canal appraisers in the appraisal of damages, nor shall any canal commissioner, who shall have attended in behalf of the state, before the appraisers, on the hearing of a claim for damages, have any voice as a member of the canal board, in the final decision of such claim on appeal.

Quorum.  
7 Cow. 526.

§ 439. (*Same ch.*, § 9.) It shall be the duty of each of the appraisers to attend the meetings to be held for the appraisal of damages; but any two of them may perform any of the duties required of appraisers of damages, provided that the decision and determination on each claim, shall be concurred in by at least two of the appraisers.

Custody of  
papers.

§ 440. (*Same ch.*, § 7; amended 1849, *ch.* 352, § 6.) It shall be their duty to deposit the books and papers in relation to the appraisal of damages, when not required to be used by them in the discharge of their duties as appraisers, in [the apartment of the canal appraisers] for safe keeping.

Do.

§ 441. (1849, *ch.* 352, § 6.) All the books, records and papers, relating to canal damages, or their appraisal, in the comptroller's office, and in the particular care and keeping

<sup>1</sup> See Art. 2, *ante*; note to § 283.

of the auditor of the canal department, except the books, papers, and proceedings of the canal board, and those relating thereto, shall be transferred to and remain in the apartment of the canal appraisers, and in their charge and keeping.

§ 442. (*R. S.*, § 50.) A regular entry of every determination and appraisement made by the appraisers, certified and signed by the appraisers making it, and containing an apt and sufficient description of the premises so appropriated, the names of the persons interested, and the sums estimated to each, for benefits and damages, shall be made in a book kept for that purpose, by the canal commissioners.

Record of decisions.  
15 Barb.  
627; 11 N.  
Y. 308;  
5 Wend.  
526.

§ 443. (*R. S.*, § 51; *amended* 1855, *ch.* 535, § 2.) A transcript of every such entry, signed by the appraisers, shall be recorded in the clerk's office of each county in which the premises appropriated shall in whole or in part be situated.

Record of transcript.  
3 Kern. 244.

§ 444. (*R. S.*, § 52.) The fee simple of all premises so appropriated, in relation to which, such estimate and appraisement shall have been made and recorded, shall be vested in the people of this state.

Right of the state.  
15 Barb.  
643.

§ 445. (*R. S.*, § 53.) If the damages, so estimated and appraised, shall exceed the benefits, it shall be the duty of the canal commissioners to pay the amount of such excess of the damages, to the persons appearing, by the determination of the appraisers, to be thereto entitled; but no such payment shall be made, where an appeal or writ of error shall be prosecuted by the canal commissioners, until a final decision on the appraisement shall have been had.<sup>1</sup>

Payment for damages.  
11 N. Y. 308.

§ 446. (*R. S.*, § 58.) When damages shall be claimed by the owner of any land which the canal commissioners shall have occupied for temporary purposes, or on which they shall have entered for the purpose of obtaining material for repairs, the acting commissioner on the line of the canal nearest to which the land shall be situate, or any engineer or superintendent of repairs authorized by him, may fix by agreement the amount of damages which such owner ought to receive.<sup>2</sup>

What damages may be settled by agreement.  
3 Kern. 233

<sup>1</sup> Appeals may be brought by state officers without security. 1861, *ch.* 288. See *ante*, § 100.

<sup>2</sup> *R. S.*, § 59 to § 67 of this chapter, relating to certain proceedings before appraisers to be chosen from discreet freeholders in the county, etc., for the

Damages  
settled by  
agree-  
ment:  
3 Kern.  
233; 19  
Barb. 657.

§ 447. (1836, *ch.* 287, § 10.) When damages shall be claimed by the owner of any lands, waters or streams, which the canal commissioners shall have occupied for temporary purposes, in the construction or improvement of any state canal, or other works connected therewith, or on which they shall have entered for the purpose of obtaining materials for the construction or improvement of such canal, or other works connected therewith, such damages, if not settled by agreement, shall be appraised by the canal appraisers.

Proceed-  
ings on  
appraisal.

§ 448. (*Same ch.*, § 11.) The proceedings in relation to the appraisal of such damages shall be, in all respects, the same as the proceedings in relation to the appraisal of damages for lands, streams or waters appropriated by the canal commissioners to the use of the public; except that no transcript of such appraisal shall be recorded in the clerk's office of any county.<sup>1</sup>

Lands  
over-  
flowed.

§ 449. (1830, *ch.* 293, § 1.) When any lands are overflowed by the erection of any dam by the canal commissioners on any river or stream connected with the public works, it shall be the duty of the canal appraisers to make a just and equitable appraisement of the damages sustained by the owners of such lands.

Proceed-  
ings.

§ 450. (*Same ch.*, § 2.) The existing laws in relation to the appraisement and payment of damages, where lands are appropriated by the canal commissioners to the use of the public, shall apply to the appraisement of damages sustained by the owners of the lands mentioned in the foregoing section.

Land,  
when to be  
surveyed  
and taken.

§ 451. (1849, *ch.* 352, § 1.) Whenever any tract or parcel of land shall be divided by the location or enlargement of any of the canals of this state, and the canal board shall be of opinion, that it is necessary for the public use, to take and appropriate either portion of such land, the canal commissioner shall cause a survey and map of such portion of such

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appraisal of temporary damages, seem to be inconsistent with, and repealed by sections 10 and 13, *ch.* 287, Laws of 1836, and are therefore omitted. See § 447.

<sup>1</sup> § 12 of this act repeals so much of part 1, *ch.* 5, R. S., and acts of March 5th and May 24th, 1859, relating to appraisal of damages as are inconsistent with this act. See note to § 446, *ante*.

land to be filed in the office of the clerk of the county where such land is situated and thereupon the title to such portion of land shall vest in the state in the same manner as other land taken by the state for the construction of the canal.

§ 452. (*Same ch.*, § 2.) The owner of any land taken by the state, as provided in the last section, shall be entitled to compensation and damages for the lands so taken, to be ascertained and appraised in the same manner as for lands taken and appropriated for the construction of the canal.

Compensation, how made to owner.

§ 453. (1837, *ch.* 143, § 1.) Whenever the canal appraisers shall appraise any land embraced within the survey for the enlargement of the Erie canal, under the act passed May 11, 1835, entitled "An act in relation to the Erie canal," at a higher sum than in the opinion of a majority of the acting canal commissioners, shall be its fair value, such land shall not be taken by the state for the purpose of enlarging said canal on such appraisal.

Land not to be taken in certain cases.

§ 454. (*Same ch.*, § 2.) If the canal commissioners shall not be able to procure a deed or deeds in fee to the state from the owner or owners of such land at such prices as they deem to be for the advantage of the state to give to enable them to enlarge the canal to the width determined upon by the canal board, they shall improve said canal by deepening the same seven feet, and widening the same as they may think proper, within the limits of the land originally appropriated and surveyed for the use of said canal.

Canal, how to be improved in certain cases.

§ 455. (*Same ch.*, § 3.) Where the surface of the water of said canal shall be less than the width determined upon by the canal board, by reason of the commissioners not being able to procure the title to the land for the price aforesaid, no boat shall be permitted to stop on said canal to receive or discharge any freight or passenger under a penalty of twenty-five dollars, to be prosecuted and recovered against the captain or owner of said boat, according to the provisions of article seven, title nine, chapter nine, of the first part of the Revised Statutes.

Receiving and discharging freight and passengers in certain places.

§ 456. (1839, *ch.* 207, § 4; *amended* 1840, *ch.* 372, § 1.) The said commissioners are also hereby authorized in all cases, where, in their opinion, the same can be done consistent with

Commutation for bridges.

the public interest, to commute with the owners and claimants of bridges over the [several canals of this state] by paying such owner or claimant such sum in lieu of a bridge as may be agreed upon between the claimant and said commissioners. And in all cases where in the opinion of said commissioners a bridge over the canal ought not to be rebuilt, and the sum to be paid for commutation shall not be agreed upon as aforesaid, the said bridge shall not be built, but the damages sustained by such owner or owners by being deprived of such bridge, and which the state, under all the circumstances, ought of right to pay, shall be appraised by the canal appraisers and paid by said commissioners.

Set-off  
against  
damages.

§ 457. (*Same ch.*, § 5.) In all cases where damages shall be claimed for being deprived of a bridge which the claimant had before constructed or maintained, the circumstance of his being equitably bound to contribute toward the construction and maintenance of an enlarged bridge, a sum equal to the expense of the maintenance of a bridge proportioned to the size of the original canal, shall be taken into consideration by the appraisers, and a proper amount on that account shall be set off against any damages to which the claimant might otherwise be entitled.

Appraise-  
ment, how  
to be  
made.

§ 458. (*Same ch.*, § 6.) The proceedings in relation to the appraisement of such damages, shall be in all respects the same as the proceedings in relation to the appraisal of damages for lands, streams or waters appropriated by the canal commissioners to the use of the public; and appeals from such appraisement may be made in the same manner.

#### GENERAL ACT, RULES, ETC.

General  
act author-  
izing ap-  
praisers to  
hear and  
determine  
certain  
claims for  
damages.

§ 459. (1870, *ch.* 321, § 1.) Jurisdiction is hereby granted to and conferred upon the canal appraisers to hear and determine all claims against the state, of any and all persons and corporations for damages alleged to have been sustained by them from the canals of the state, or from their use and management, or resulting or arising from the negligence or conduct of any officer of the state having charge thereof, or resulting or arising from any accident or other matter or thing connected with the canals; but no award shall be made unless the facts proved shall make out a case which would create a legal liability against the state, were the same established in evidence in a court of justice against an individual or corporation; and

in case such legal liability shall be satisfactorily established, then the appraisers shall award to the claimant such sum as shall be just and equitable, subject, however, to the right of appeal to the canal board in all cases, in the manner now provided by law; provided that the provisions of this act shall not extend to claims arising from damages resulting from the navigation of the canals.

§ 460. (*Same ch.*, § 2.) The claimants shall file their claims in the office of the canal appraisers within two years from the time said damages shall have accrued, but claims for damages which shall have accrued more than one year prior to the passage of this act, shall be filed within one year from the date hereof. The canal appraisers are hereby authorized and required to employ counsel on behalf of the state, on the hearing of such claims, as may be necessary to protect the interests of the state. All acts or parts of acts inconsistent with this act are hereby repealed.<sup>1</sup>

Claims,  
when to be  
filed.

§ 461. (*Same ch.*, § 3.) The said board of canal appraisers shall prescribe rules as to the form and manner in which claimants shall make out and verify their statement of claims; and they shall provide a general rule for the taking of evidence when the witness shall not be examined orally before said board, and for reducing to writing and preserving said evidence when taken. The said board is hereby authorized to issue subpoenas for the attendance of witnesses, and shall have power to compel their attendance by attachment, and to punish them for contempt in the same manner as is now provided by law in relation to courts of record; and the said board shall also have power to administer oaths to witnesses and to issue commissions for the examination of witnesses residing out of the state.<sup>2</sup>

To pre-  
scribe  
rules and  
proceed-  
ings.

<sup>1</sup> Ch. 668, of 1871, relating to payment of counsel by the auditor was repealed, 1872, ch. 826.

<sup>2</sup> The following rules for making out and verifying claims, were prescribed by the canal appraisers under this section:

#### STATE OF NEW YORK.

OFFICE OF THE BOARD OF CANAL APPRAISERS,  
ALBANY, N. Y., May, 1870.

The canal appraisers of the state of New York, do hereby prescribe and establish the following rules as to the form and manner in which claimants shall make out and verify their statement of claims.

The statement of claim to be filed in the office of the appraisers shall contain:

1st. The full name, residence and post-office address of each claimant;

## APPEALS, NEW TRIALS, ETC.

Appeal to  
canal  
board.

§ 462. (1829, *ch.* 368, § 3.) Every person having exhibited a claim for damages to the appraisers, or the canal commissioners, where they shall deem the interest of the state to require it, may enter an appeal from the decision of the appraisers on such claim, to the canal board, who shall proceed to reverse, affirm or modify the appraisement, as in their opinion justice shall require; and their decision shall in all cases be final and conclusive.

How made  
and  
served.

§ 463. (*Same ch.*, § 4.) Every such appeal shall be made in writing, stating briefly the grounds on which the appeal is made; if made by the canal commissioners, one copy of the appeal shall be served on the canal appraisers, and another on the party claiming damages, his guardian or agent, either personally or by leaving the same at his usual place of abode; if made by the party claiming damages, one copy of said appeal shall be served on the appraisers, or one of them, and another on the canal commissioners.

Decisions  
where to  
be filed.

§ 464. (*Same ch.*, § 5.) It shall be the duty of the canal appraisers, within thirty days after any claim is decided upon, to make a transcript of the entry of such decision, and file the same in the clerk's office of the county in which the

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and if the claim shall have been assigned, the full name, residence, and post-office address of each and every assignor of such claim, and the date of each assignment.

2d. A plain and concise statement of the facts constituting the claim, and the time and place at which it originated.

3d. A bill of particulars, specifying each item for which damage is claimed.

4th. A statement whether the claim or any part thereof has been presented to a canal commissioner, or to the canal board, for settlement or for adjudication; and in case the claim, or any part thereof, shall have been so presented, and then the decision thereon, and when and by whom made, and the grounds upon which it is claimed a rehearing should be had.

5th. The statement of claim shall be verified by the affidavit of the claimant to the effect that the same is true to the knowledge of the claimant, except as to the matters stated on information and belief, and as to those matters he believes it to be true, and that no part of the claim has been paid, or heard and decided by the canal appraisers.

SAMUEL NORTH,  
J. GAY,  
GEO. C. GREENE,  
*Canal Appraisers.*



premises passed upon are situate; and in all cases the appeal must be made, and the proper copies served within three months from the time such transcript is filed in the clerk's office as aforesaid.

Appeal to be served within three months.

§ 465. (1868, *ch.* 579, § 1.) In all cases, where by special act the canal appraisers have been or may hereafter be authorized, to hear and determine any claim for damages resulting from any cause, an appeal may be taken to the canal board from the decision or award of said canal appraisers, by the canal commissioners on the part of the state, or by any claimant affected by such award or decision. The canal board on such appeal, may affirm, reverse or modify the decision or award appealed from, and their decision shall be final and conclusive.<sup>1</sup>

Appeals from awards under special acts.

§ 466. (*Same ch.*, § 2.) Such appeal shall be taken within three months from the time that such decision or award shall have been made and entered, \* \* \*

When to be taken.

§ 467. (*Same ch.*, § 3.) All existing laws regulating appeals from the decisions of the canal appraisers, not inconsistent with the preceding section, shall apply to appeals under this act.

Proceedings.

§ 468. (1870, *ch.* 768, § 2.) \* \* \* In any appeal by the canal commissioners, on the part of the state, from a decision or award made by the canal appraisers, the notice of appeal may be signed by any one or more of such commissioners, and the signatures of all shall not be required.

Appeal by one commissioner.

§ 469. (1829, *ch.* 368, § 6.) The appraisers shall make a return in writing, to every appeal so served on them, setting forth a copy of the claim for damages; a transcript of the evidence, if any; the items on which allowances were made, and the several amounts; the items, if any, on which no allowance was made; and the reasons and grounds on which their decision is made.

Return to appeal.

§ 470. (*Same ch.*, § 7.) It shall be the duty of the canal board to meet, from time to time, and decide on all cases of

Canal board to decide appeals.

<sup>1</sup> By resolution of canal board (Proceedings, 1872, p. 192), it was "Resolved, that in the opinion of this board, it has no power to order new trials before the appraisers, in appeals, from awards of appraisers under special acts." (Attorney-general dissenting.)

appeals made from the decisions of the appraisers; and if, in their opinion, the interest of the state requires it, they shall direct the attendance of the appraisers, or either of them, to give evidence in relation to the subject-matter of the appeal; they shall decide all cases of appeal, on the evidence or information contained in the transcript furnished by the appraisers, and the evidence of the appraisers, if any is obtained.

Decisions  
how made  
and filed.

§ 471. (1849, *ch.* 352, § 4; *amended* 1866, *ch.* 836, § 8.)

Whenever the canal board shall, upon the hearing of any appeal from the award of the canal appraisers, reverse or modify such award, they shall state on the resolution or order relating to said appeal, the grounds of such reversal or modification, and how much, if any, such award is increased or diminished, and a copy of such resolution or order shall be immediately filed with the canal appraisers, and also a copy of every resolution or affirmance. The canal board shall also have power to order a rehearing before the canal appraisers, in the nature of a new trial before the canal appraisers.<sup>1</sup>

New trials.

Rehearing  
when  
granted.

§ 472. (1840, *ch.* 201.) The canal board are hereby authorized to grant a rehearing, in any case they now are, or may hereafter be, authorized to adjudicate, whenever, in their judgment, the justice of the case may require it; but no party shall be entitled to but one rehearing, and the adjudication upon such rehearing shall be final and conclusive; but no such rehearing shall be granted, unless application in writing shall be made therefor, within sixty days after such case shall have been adjudicated by the said board.

Certiorari  
to supreme  
court, on  
awards of  
appraisers.

§ 473. (1840, *ch.* 288, § 16.) The commissioners of the canal fund or the canal commissioners may in their discretion cause a certiorari to be brought by the attorney-general, in behalf of the state, from the determination of the canal appraisers upon any legal or constitutional question, to the supreme court, in cases where any damages have been or shall be awarded upon any claim for the deprivation of any right, or pretended right, to the use of any water or water privileges or fisheries, or for the temporary use or diversion of any water by the canal commissioners.

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<sup>1</sup> See note to § 465, *ante*, and 24 N. Y. 583.

§ 474. (*Same ch.*, § 17; *amended* 1847, *ch.* 280, *and Code*, §§ 11 *and* 457.) Such certiorari shall be brought within the time prescribed by law in reference to appeals in similar cases to the canal board, and the appraisers shall make a return in writing to the supreme court within the time and containing the same matters as required in cases of such appeals; and the supreme court shall determine such certiorari on such returns only, or upon such further returns as the said court may require, and may set aside such appraisal for want of jurisdiction in the appraisers, or for any error committed by them in such determination, except as to the amount of damages awarded, and may award costs in their discretion; and any party interested may bring an appeal on the judgment of the supreme court on such certiorari, to the [court of appeals].

Proceedings thereon.

§ 475. (*Same ch.*, § 18.) Such certiorari, or any judgment thereon, shall not prevent an appeal, as now provided by law, to the canal board, in respect to the amount of any damages awarded by the canal appraisers<sup>1</sup>

Not to prevent certain appeals.

§ 476. (1849, *ch.* 352, § 5.) The canal appraisers shall make an annual report to the legislature at the commencement of the annual session thereof, which shall contain:

Canal appraisers to report annually to legislature.

1. The names and residences of the several claimants who have preferred claims.

2. The nature of the claim and the amount claimed.

3. What action has been had upon each and the reason thereof, and, if an award has been made the nature and amount thereof.

4. Whether an appeal has been taken in any case, and, if the appeal has been decided, the nature of the decision.<sup>2</sup>

<sup>1</sup>For provisions relating to proceedings in the courts, where the people of the state are a party, see commissioners canal fund, *ch.* ix, title 2, § 97, etc., *ante*.

<sup>2</sup>As to time of making report, see § 162, *ante*.

## ARTICLE IV.

## OF THE CANAL BOARD, THEIR POWERS AND DUTIES.

SECTION 485. Of whom to consist.

486. Their powers and duties.

## APPOINTMENTS AND REMOVALS.

- 487. To appoint or remove superintendents of repairs and collectors of tolls, and fix their compensation.
- 488. May direct inquiry into the truth of charges against officers employed.
- 489. Superintendents, how removed by commissioner.
- 490. Superintendents to give constant and personal attention to their duties.
- 491. Compensation of officers, for the collection of tolls, to be fixed when appointments are made; not to be changed during the year; no collector to employ clerk except by certificate of the auditor.
- 492. Ten inspectors and measurers may be appointed.
- 493. They are authorized to administer oaths.
- 494. Two additional inspectors and measurers to be appointed and located in New York.
- 495. One additional at Whitehall.
- 496. His powers and duties.
- 497. One additional at Oswego; his powers and duties.

## TOLLS.

- 498. To fix rates of toll, regulate their collection, and impose forfeitures.
- 499. Rates of tolls to be uniform on all the canals.
- 500. Not to be reduced below toll-sheet of 1852, except by concurrence of the legislature.
- 501. Tolls on Cayuga inlet.
- 502. Tolls on Albany basin.
- 503. Tolls on Seneca river, above Baldwinsville dam.
- 504. Seneca river improvement and Baldwinsville canal, to be under control of the canal board; tolls on, etc.
- 505. Tolls on Moose river.
- 506. Tolls on Beaver river.
- 507. Tolls on Mohawk basin, West Troy.
- 508. Tolls on Oneida river.
- 509. Tolls on Oneida Lake canal and feeder to be a part of canal fund.
- 510. Tolls on Oneida lake.
- 511. Canal board to designate where tolls shall be deposited.
- 512. May designate where superintendent of Onondaga salt springs shall deposit moneys.

## RULES AND REGULATIONS.

**SECTION 513.** To make certain rules and regulations.

- 514. To make rules and regulations in respect to size and structure of boats, and other floats, weighing and inspection of boats and cargoes, and may impose forfeitures.
- 515. May receive a specified sum as a commutation for tolls upon passengers.
- 516. How such commutation shall be paid.
- 517. Shall prescribe regulations for bringing suits for penalties and forfeitures; moneys recovered to be paid to treasurer.
- 518. When penalty or forfeiture does not exceed fifty dollars, how recovered.
- 519. 26th and 27th sections of R. S., art. 2, ch. ix, how construed.
- 520. Copies of rules, regulations and forfeitures, to be printed and distributed.
- 521. Rules, regulations and forfeitures, to be filed in canal department; certified copy, by auditor, to be evidence in court of law.
- 522. Reim's champion boat scales may be used for weighing boats and cargoes.
- 523. Appropriation for expense of testing.
- 524. May remit forfeitures.
- 525. When and how.
- 526. Shall have power to modify or reduce penalties.
- 527. May remit penalties in certain cases; application to be made within sixty days; how to be made.
- 528. Contract system for repairs and contracting board abolished.
- 529. Contractors may surrender contracts for repairs.
- 530. Contracts for repairs may be canceled by canal board upon recommendation of the canal commissioners.
- 531. Contractors not to receive compensation for prospective damages or profits, but shall be paid for permanent improvements, tools, materials, implements and money earned.
- 532. Canal board to adjust the amount to be paid.
- 533. To determine the method or system by which repairs shall be made. To appoint patrolmen, etc.
- 534. To make rules and regulations and impose penalties and forfeitures.

**ENLARGEMENT, NEW WORK AND EXTRAORDINARY REPAIRS.**

- 535. When estimated repairs on canals less than \$30,000 board may execute them; when more, to report plan and estimate to the legislature.
- 536. Enlargement of locks Erie canal, cost of how payable.
- 537. Same rule applied to rebuilding all structures on the Erie canal.
- 538. Work on enlargement Erie canal to be kept distinct from ordinary repairs.
- 539. Not to make extra allowances to contractors. May cancel contracts.
- 540. Shall not cancel contracts for enlargement or repairs in certain cases.
- 541. Canals declared completed from September 1st, 1862.

**SECTION 542.** Prohibited from changing plan of completed canals.

543. Contracts to provide that the contractors shall pay damages caused by his default or neglect.

#### PROCEEDINGS, APPEALS, ETC.

544. Authorized to administer oaths.

545. May require the attendance of witnesses and issue subpoenas.

546. May direct payment of witnesses; and of officer serving subpoenas.

547. Three members may take testimony in claims for extra allowance.

548. Assent of five members requisite for the adoption of resolution involving expenditure of public moneys; ayes and noes to be entered on minutes.

549. Secretary to cause minutes to be published in daily state paper at Albany.

550. Person guilty of false swearing in oath before board, deemed guilty of perjury.

551. Return to appeals, how made.

552. Board to decide on appeals from appraisers' awards.

553. May grant rehearing in certain cases, if applied for within sixty days.

554. May reverse or modify award. May order rehearing before appraisers.

555. May order sale of surplus waters in certain cases.

#### APPROPRIATION AND SALE OF LAND.

556. May take and appropriate lands divided by location of canals. Map and survey to be filed in county clerk's office, thereupon title to vest in the state.

557. Damages, to be appraised by the appraisers.

558. May determine when lands taken for the canals shall be sold.

559. Shall determine when lands have been abandoned; commissioners of land office to sell or convey; certain rights to be reserved.

560. Original owners to have preference of purchase for one year.

561. Act of 1857, ch. 257, extended to certain cases.

562. Not to apply to lands heretofore sold or to Oswego dry docks.

#### OF THE CANAL BOARD.

§ 485. (*Const.*, Art. V, § 5.) The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor and the canal commissioners.

**Powers  
and duties.**

§ 486. (*R. S.*, § 68.) There shall continue to be a canal board, who shall possess the powers, and discharge the duties enumerated in this title, or which shall hereafter be by law enacted or declared.

## APPOINTMENTS AND REMOVALS.

§ 487. (*R. S.*, § 69; *modified* 1870, *ch.* 55, § 6.) They shall have power to appoint so many superintendents of repairs, and collectors of tolls on the canals, as they may deem necessary, to supply all vacancies that may occur in those offices, to remove any so appointed when they judge such removal proper, and to determine the amount of compensation which they shall respectively receive. \* \* \*

Appoint-  
ment of  
officers,  
etc.  
29 N. Y. 534;  
27 N. Y. 387;  
38 N. Y. 386.

§ 488. (1841, *ch.* 160, § 3.) The canal board may direct the district attorney of the proper county to conduct an inquiry into the truth of any charges made or to be made against any superintendent, collector or other officer appointed or employed by such board, or by the canal commissioners, and the same proceedings shall be had thereon in all respects as provided by the fourth article of the sixth title and fifth chapter of part first of the Revised Statutes, in relation to charges against a sheriff or county clerk, except that the testimony so taken shall be transmitted to the canal board, and the necessary expenses of any such inquiry shall be certified by the canal board and paid by the commissioners of the canal fund, out of the canal revenues.

Charges  
against su-  
perintend-  
ents and  
collector,  
how to be  
inquired  
into.

§ 489. (1854, *ch.* 332, § 4.) No superintendent of canal repairs shall be removed by any canal commissioner during the session of the canal board; but either of the canal commissioners, when a recess or adjournment of the canal board shall have been ordered, or shall exist for more than five days, may, during such recess or adjournment, remove any of the superintendents on the division of the canals of which he has charge, and fill the vacancy occasioned by such removal, to continue until the order of the canal board in the matter. And the commissioners making such removal shall, without delay, report the name of the person removed, and the name of the person appointed, to the canal department, with the reasons for making such removal. On receiving such report, the auditor shall immediately give notice to the members of the canal board of a meeting of such board to consider such report. And if the canal board shall re-appoint the superin-

Superin-  
tendents  
how re-  
moved by  
commis-  
sioner.

<sup>1</sup> The limitation of the salaries of superintendents of repairs to \$1,000 per year in the original section (*R. S.*, § 69), is removed by chapter 55 of 1870, § 6. See *post*, § 533. For appointment of engineers see § 876, *post*.

tendent so removed, he shall not be again removed by a canal commissioner.

§ 490. (1851, *ch.* 57, § 1.) Superintendents appointed by the canal board on the several canals of this state, shall give their personal and constant attention to the duties of their office.

Compensation to be fixed by canal board.

§ 491. (1859, *ch.* 495, § 5.) The canal board shall, from year to year, when the annual appointments are made, fix and determine the compensation and salaries to be paid to the collectors of canal tolls and their clerks, to the weighmasters and their assistants, and to such other officers and agents connected with the collection of tolls on the canals as the said board are or may be authorized to appoint or employ, which shall not be increased during such year. No clerks shall be employed by any collector of tolls, except when the auditor of the canal department shall certify the same to be necessary to enable such collector to perform the duties of his office.

Ten inspectors and measurers to be appointed.

§ 492. (*Same ch.*, § 6.) For the purpose of protecting the state in its property, revenue and tolls on the canals, the canal board is hereby authorized to appoint ten inspectors and measurers of lumber and timber, and of boats and their cargoes, to be located at such points and places on the canals as may be deemed most expedient to accomplish the objects of the appointment.

May administer oath.

§ 493. (*Same ch.*, § 7.) The measurers and inspectors authorized to be appointed under the next preceding section, are hereby authorized to administer oaths, when the same becomes necessary, to enable them to discharge the duties of their respective offices.

Two additional inspectors and measurers to be appointed, to be located in New York.

§ 494. (1866, *ch.* 836, § 4.) The canal board is hereby authorized to appoint two additional inspectors and measurers of lumber and timber, and of boats and their cargoes, to be located in the city of New York, who shall possess all the powers and perform all the duties of such inspectors and measurers located upon the canals of this state, and may receive such compensation as shall be allowed by the canal board, not exceeding the compensation paid to other inspectors and measurers employed upon the canals.



§ 495. (1867, *ch.* 71, § 1.) For the purpose of protecting the interests of the state in its property, revenue and tolls, the canal board is hereby authorized to appoint an inspector and measurer of lumber, and of boats and their cargoes, at Whitehall, in the county of Washington, who shall possess all the powers and perform all the duties now imposed by law upon such officers, and receive such compensation for his services as may be fixed by the canal board. In addition to the foregoing powers and duties, the said inspector shall have power and it shall be his duty to regulate and station all vessels, boats, rafts and other craft in the harbor of Whitehall, within the corporate limits of the village of Whitehall, and from time to time to remove such vessels, boats or other craft as may not be employed or detained in discharging or receiving cargoes or loading, to accommodate other vessels, boats or other craft to load or unload, and to prevent all vessels, boats, rafts and other craft from obstructing for an unreasonable length of time, the entrance of boats, rafts and other craft into the Champlain canal at Whitehall aforesaid.

Additional  
inspector  
at White-  
hall.

§ 496. (*Same ch.*, § 2.) The said inspector shall have power and it shall be his duty to determine, how far and in what instances the masters and others having charge of vessels, boats or rafts shall accommodate each other in their respective situations and locations in said harbor; and if any master or other person having charge or control of any vessels, boats or rafts within the limits aforesaid, shall neglect or refuse to obey the directions of said inspector in matters within his authority, or if any person shall resist or oppose said inspector in the execution of the duties of his office, such person or persons shall, for every such offense, forfeit and pay the sum of twenty-five dollars, to be recovered with costs in the name of the people of the state of New York, in any court having cognizance of the same, and all moneys so collected shall be paid over to the collector of canal tolls at Whitehall aforesaid, who shall account for and pay over the same to the treasurer of this state.

Powers  
and duties

Penalty.

§ 497. (1868, *ch.* 859, § 1.) The canal board is hereby authorized to appoint an inspector and measurer of lumber and timber, and of boats and their cargoes, to be located at Oswego, New York, in addition to the inspectors and measurers now authorized by law, whose powers, duties and compensation shall be the same as those of inspectors and measurers

Inspector  
at Oswego

whose appointment is authorized by section six of chapter four hundred and ninety-five of the laws of 1859.<sup>1</sup>

## TOLLS.

**Tolls.**      § 498. (*R. S.*, § 70.) The canal board shall, from time to time, fix the rates of tolls to be collected on the canals, and shall prescribe such rules and regulations relative to their collection, and impose such forfeitures of money, for the breach thereof, as from time to time they shall judge reasonable; provided no forfeiture for a single offense shall exceed the sum of twenty-five dollars.

**To be uniform.**      § 499. (1841, *ch.* 160, § 1.) The canal board shall have power from time to time to fix the rates of toll on all the canals of this state, or any portion thereof, which has or may become navigable, so as to make them uniform and corresponding with those charged on the Erie and Champlain canals, and to prescribe regulations for the collection of such tolls, and impose forfeitures of money for the breach thereof, in the same manner as now provided by law in respect to the completed canals.<sup>2</sup>

**Not to be reduced below 1852, except by concurrence of the legislature.**      § 500. (*Const. Amdt.*, 1854, *Art. VII*, § 3.) \* \* \* The rates of toll on persons and property transported on the canals shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board with the concurrence of the legislature. \* \* \*

<sup>1</sup> The canal board in 1869 (Proceedings, p. 173,) recommended the passage of a law for the appointment of six more inspectors.

<sup>2</sup> For previous legislation relating to tolls on the lateral canals, see Che-mung canal, Laws 1829, ch. 135; 1832, ch. 164; 1841, ch. 219. Crooked Lake canal, Laws 1829, ch. 120. Chenango canal, Laws 1833, ch. 32; 1839, ch. 262. Black River canal and Erie canal feeder, 1836, ch. 157. Oneida River, Lake, canal, etc., 1839, ch. 284; 1841, ch. 238; 1846, ch. 325.

<sup>3</sup> See concurrent resolutions of legislature relative to tolls, viz.: Laws of 1854, p. 1107, tolls reduced on certain articles; 1859, p. 1210, reduced toll sheet approved; 1862, p. 999, tolls reduced on certain articles; 1862, p. 1000, tolls reduced on certain articles; 1866, p. 2140, toll reduced on iron ore; 1870, p. 2149, "Resolved, that the legislature do concur in the recommendation of the canal board, and assent to the reduction of canal tolls to such an extent, not exceeding fifty per cent below the rates as prescribed by the toll sheet of 1852, as the canal board shall, in its discretion, think expedient and as the exigencies of trade shall demand during the ensuing season of navigation, and to change the same from time to time as circumstances shall, in the judgment of the board, require."

1871, p. 2182, canal board requested to reduce tolls on certain articles,

§ 501. (1835, *ch.* 202, § 2.) All property which shall be transported on the Erie canal, and which shall pass through the said channel (*Cayuga inlet*), shall be subjected to the like tolls as are by law provided for property transported on said Erie canal, for one mile in addition to the tolls chargeable on said canal, which tolls shall be collected in the same manner and at the same offices as the tolls on the Seneca and Cayuga canal, and all the laws and regulations relative to the collection of tolls shall apply to this act.<sup>1</sup>

Tolls on  
Cayuga  
inlet.

§ 502. (1849, *ch.* 200, § 9.) The same rate of tolls shall hereafter be charged and collected for said (*Albany*) basin as on the canals of this state, computing the same in all cases as one mile in length, and which shall be considered as forming part of the canal revenues, and not be diverted therefrom, and the said basin shall remain free for canal boats and canal craft, from any charge for wharfage or dockage,<sup>2</sup> and the said basin shall be owned by and remain the property of this state, and be under the care and charge of the canal commissioners. The owners of the said pier shall forever hereafter keep the said pier in good repair, to the satisfaction of the canal commissioners.

Tolls on  
Albany  
basin.

§ 503. (1850, *ch.* 153, § 3.) The rates of toll to be paid on boats, merchandise, and every description of property transported upon said canal or river above said dam (*at Baldwinsville, on the Seneca river*), shall be fixed by the canal board, and in determining the rates of toll so to be fixed, said canal board shall adopt and prescribe such rates as shall pay the necessary cost and charges of the superintendence and repairs of such canal and river improvement, and also secure a return to the canal revenues of the state, of not less than five per cent per

Tolls on  
Seneca  
river above  
Baldwins-  
ville dam.

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1873, February 14th, p. 1389, concurrent resolution in the same form as that of 1870, but adding thereto the words "during the ensuing season of navigation."

For toll sheet of 1852, 1859, 1868, 1869, 1870, 1871, 1872 and 1873, see appendix.

<sup>1</sup> See also, 1845, *ch.* 101, and 1847, *ch.* 251. The act of 1847 provides that in case certain improvements are directed and made in the channel of Cayuga inlet, "that an additional toll equal to the toll on one mile of canal," shall be collected until the appropriation under this act and the interest thereon, be repaid to the general fund from the said additional toll.

<sup>2</sup> "Unless said canal boats shall be actually engaged in receiving or discharging cargoes." See Laws 1867, *ch.* 560, § 1, *ante*, § 356.

annum upon the costs of such improvement, and such tolls shall be charged upon so much of said river as shall be made navigable by said dam and canal around the same.

Seneca  
river  
and Bald-  
winsville  
canal.

§ 504. (1854, *ch.* 333.) The Seneca river improvement and Baldwinsville canal are hereby placed under the control of the canal board, and under the same regulations as to tolls, superintendence and repairs, in all respects, as the other canals of this state.

Moose  
river.

§ 505. (1864, *ch.* 174, § 2.) The same tolls shall be collected upon all property passing upon the Moose river, as are now collected upon the canals of this state.

Beaver  
river.

§ 506. (1864, *ch.* 233, § 4.)<sup>1</sup> The canal board are directed and required to levy and collect the same tolls upon the river hereby to be improved ("*the rafting channel of Beaver river*"), as are now levied and collected upon the several canals of this state, upon all property and boats passing up and down the same.

Mohawk  
basin,  
West Troy.

§ 507. (1867, *ch.* 621, § 1.) The canal board are hereby authorized and directed to collect one mile toll on all boats and cargoes, rafts or floats, or other property navigating or using the state basin at West Troy, known as the Mohawk basin, for the purpose of receiving or discharging cargoes, or for storing in or occupying any portion of said basin north of that point known as the ferry-way or Morrison's foot bridge; but if the state shall hereafter build or cause to be built any lock or locks between said basin and the present Erie canal, then all boats passing through said basin, to or from said lock or locks, for the purpose of passing in or out of the Erie canal to or from the Hudson river, shall not be subject to the payment of the aforesaid one mile toll.

Tolls on  
Oneida  
river.

§ 508. (1839, *ch.* 284, § 5.) Such tolls shall be collected on boats and their cargoes, and on passengers navigating the Oneida river, when the same shall have been improved agreeably to the provisions of this act, as the canal board shall hereafter establish.

Tolls on  
Oneida  
Lake canal  
and feeder.

§ 509. (1841, *ch.* 238, § 4.) The tolls collected on the Oneida Lake canal and feeder, and on boats and property con-

<sup>1</sup> An act for the improvement of Beaver river.

veyed on that part of the Seneca river along which a towing-path has been constructed by the state, shall constitute a part of the canal fund.

§ 510. (1867, *ch.* 934, § 4.) All boats and freights passing over the waters of the Oneida lake, to or from any point, except those situate on said lake, shall pay the same toll per mile as is charged on the canals of this state; but nothing in this act contained shall be taken or held to authorize the imposition of tolls on any other lake of this state.

Oneida lake.

§ 511. (1840, *ch.* 358, § 2.) The canal board may designate any banking association to receive the deposit of tolls or other canal moneys, provided such association shall carry on its business in a place convenient for such deposits, and shall comply with such terms as may be prescribed by the board, all the provisions of former acts in relation to the deposits of such moneys in banks, shall extend and apply to such deposits and banking associations.

Canal board may designate where deposits shall be made.

See § 632, page 261.

§ 512. (1859, *ch.* 346, § 26.) The superintendent ("*of the Onondaga Salt Springs*,") shall deposit in each week, to the credit of the treasurer of this state, in such bank or banks as may be designated by the canal board, all the moneys received by him as such superintendent, and on Monday of each week he shall transmit to the comptroller a statement showing the amount of the revenues collected and received by him, and so deposited during the preceding week.

To designate where superintendent of Onondaga salt springs shall deposit moneys.

RULES AND REGULATIONS.

§ 513. (1835, *ch.* 21.) All such rules and regulations in relation to the canals, as are now authorized by sections twenty-five, one hundred and forty-eight, one hundred and

To make regulations.

NOTE — Ch. 146 of the Laws of 1856. "An act authorizing the construction of a bridge across the Hudson river, at Albany, contains the following provisions:

"§ 12. After the said bridge shall have been completed, such tolls and charges may be collected for crossing the same on foot, and with wagons, cars or carriages of any kind, and with horses or other animals, or otherwise, as the directors may from time to time establish, subject to the approval of the canal board; provided, however, that such tolls shall be so regulated that they shall not yield a net annual revenue to exceed ten per cent upon the amount of such capital stock." \* \* \*

The toll-sheet for this bridge was approved by the canal board, March 15, 1866.

forty-nine and one hundred and eighty-eight, of title nine of chapter nine of the first part of the Revised Statutes, to be made by the canal commissioners, or the commissioners of the canal fund, may hereafter be made by the canal board, with the like penalties and forfeitures as are now provided in said title.

Do.

§ 514. (*R. S.*, § 25.) They shall, from time to time, make such rules and regulations, not inconsistent with the laws of the state, in respect to the size and structure of boats, rafts and other floats, on the waters of the canals, and the weighing and inspecting of boats and their lading, and in respect to all matters connected with the navigation thereof, and impose such forfeitures of money, for the breach of such rules and regulations, as they may judge reasonable; but no forfeiture so imposed shall, for a single offense, exceed the sum of twenty-five dollars.

Commuta-  
tion for  
tolls upon  
passen-  
gers.

§ 515. (*R. S.*, § 148; *amended* 1835, *ch.* 21.) The [canal board] may, in their discretion, receive from the owners of any boat a specified sum by the year, for a license to carry passengers therein, as a commutation for tolls upon passengers.

How paid.

§ 516. (*R. S.*, § 149; *amended* 1835, *ch.* 21.) Such commutation shall be paid at such time and in such manner as the [canal board] may prescribe, and no statement or affidavit relative to conveying passengers, shall be required from the master of any boat so licensed.

Penalties,  
how re-  
covered.

§ 517. (*R. S.*, § 188; *amended* 1835, *ch.* 21, 1848, *ch.* 162.) All suits for penalties and forfeitures imposed in any article of this title, or for damages, in behalf of the state, shall be prosecuted in the name of the people of this state, by such persons and in such manner as the [canal board] in their regulations, shall direct; and all moneys recovered therein shall be accounted for and paid over to [the treasurer].

Before  
whom.

§ 518. (*R. S.*, § 189.) Every such penalty or forfeiture, not exceeding the sum of fifty dollars, may be recovered before any justice of the peace in any county.

§ 519. (*R. S.*, § 71.) The provisions of the twenty-sixth and twenty-seventh sections of this title, shall be construed to embrace all rates of toll, rules and regulations, so fixed and prescribed.

§ 520. (*R. S.*, § 26.) They shall cause a sufficient number of copies of all such rules and regulations, including the forfeitures for the breach thereof, to be printed, and shall distribute the same to the superintendents of repairs, the collectors of tolls and lock-keepers, to be kept in their respective offices for public inspection.<sup>1</sup>

§ 521. (*R. S.*, § 27; *amended* 1848, *ch.* 162.) All rules, regulations and forfeitures, established by them in relation to the management and navigation of the canals, shall be filed in the [canal department] and a copy thereof, certified by the [auditor], under his hand and the seal of his office, shall be received in all courts of law, as due proof that such rules, regulations and forfeitures were by them established.

§ 522. (1870, *ch.* 656, § 1.) The canal board is hereby authorized to adopt the "Reim's Champion Boat Scale," in place of the present system of weighing boats and cargoes on the canals of this state, if they are fully satisfied from tests already made, or from such further tests as they shall deem necessary, that the interests of the state will be subserved thereby, and they are hereby empowered to contract with the owners of the "Reim's Champion Boat Scale," for the use of said scale on the various canals of this state.

§ 523. (*Same ch.*, § 2.) The state treasurer shall pay on the warrant of the auditor of the canal department or the comptroller, out of any funds appropriated for canal purposes, the moneys necessary to carry out the first section of this act.<sup>2</sup>

§ 524. (*R. S.*, § 72.) The canal board shall have power to remit, either absolutely, or upon such conditions as they shall prescribe, any forfeitures that may be incurred, by a violation

<sup>1</sup> Ch. IX, Laws 1827, 2d Session, p. 17, contains the following provision: "§ 20. The canal board shall make such order for the publication, in a pamphlet form and distribution of title IX, of chapter IX, of the first part of the Revised Statutes, as they shall deem expedient, and the expenses of such publication and distribution shall be charged to the canal fund."

<sup>2</sup> For reports, tests, etc., relating to "Reim's Champion Boat Scale and Bilge Water Measure," see canal board proceedings, 1869, pp. 171, 239 and 268; 1870, pp. 184, 206 and 209; 1871, pp. 48, 87 and 93.

As to "Amsden's Hydrostatic Scale," see Laws 1866, *ch.* 748, p. 1619, and canal board proceedings, 1868, pp. 67, 84, 88 and 209; 1869, pp. 145, 209, 239 and 268; 1870, p. 206; 1871, pp. 48 and 87.

of any of the provisions of this title, or of any of the rules and regulations established by themselves, or the canal commissioners.

§ 525. (*R. S.*, § 73; *amended* 1848, *ch.* 162.) No such forfeiture shall, however, be remitted, unless on the petition, in writing, of the party liable thereto, supported by due proof of the facts, upon which the claim for a remission shall be founded, and every such petition, with the accompanying proof, and the order of the board thereon, shall be preserved and filed in the office of the [canal department].

§ 526. (1837, *ch.* 451, § 5.) The canal board shall have power to modify or reduce any of the penalties imposed by article seven, of chapter nine, title nine of the first part of the Revised Statutes.

May remit  
penalties  
in certain  
cases.

§ 527. (1855, *ch.* 534, § 5.) The canal board or the commissioners of the canal fund shall not have power to remit penalties imposed for any commission or attempt to commit a fraud upon the revenues, unless they are satisfied that such penalty was illegally imposed, and such remission be applied for in writing and under oath, within sixty days after the imposition of such penalty.

Repair  
contract  
system and  
contract-  
ing board  
abolished.

§ 528. (1870, *ch.* 55, § 1.)<sup>1</sup> All laws and parts of laws requiring the letting and keeping the canals in repair by contract are hereby repealed, and the contracting board is hereby abolished. But the repeal of the said laws shall not, except as otherwise provided by this act, invalidate the contracts heretofore made, or discharge any of the contractors from the duties and obligations imposed by such contracts or the said laws, and the right of the said contractors to receive from the state any pecuniary compensation or other relief under said contracts shall not be affected thereby.

Contract-  
ors may  
surrender  
contracts.

§ 529. (*Same ch.*, § 2.) It shall be lawful for any contractor for repairs of the canals, under a contract heretofore made, to

<sup>1</sup> "An act to abolish the contracting board and the system of repairing the canals by contract."

For report as to power conferred on canal board by this act, and relative to settlement of contracts, duties, etc., see canal board proceedings, 1870, p. 187.

See note on repair contract system, *ante*, § 170.



surrender to the canal board his said contract; and the said canal board shall, upon such surrender, accept the same, and from the time of such surrender and acceptance thereof the said contract shall be annulled, and the said contractor shall be discharged from all the obligations thereof.

§ 530. (*Same ch.*, § 3.) It shall be lawful for the canal board, upon the recommendation of the canal commissioners, whenever they shall deem it for the interests of the state, to cancel and annul any contract or contracts for repairs of the canals heretofore made, by a resolution to be entered in the minutes of the said board, and upon the entry of such resolution, such contracts as shall be thereby declared canceled and annulled shall be annulled, and the contractors discharged from all obligations to perform the same thereafter.

Contracts may be canceled.

§ 531. (*Same ch.*, § 4.) The contractors who shall surrender their contracts, or whose contracts shall be canceled and annulled by the canal board under the provisions of this act, shall not be entitled to demand or receive, and shall not be allowed for any prospective damages or any compensation for prospective or unearned profits, and shall be entitled to receive no compensation or damages except as provided by this act. Every contractor, the surrender of whose contract shall be accepted by the canal board, and every contractor whose contract shall be canceled and annulled by the canal board, shall be entitled to receive the money deposited as a security for the performance of his contract, with the accumulated interest thereon, together with the money earned under such contract, and also for such amount or proportion of work, labor and services under the same for permanent improvements not heretofore provided for in this section as shall, in the judgment of the canal board, be equitable and just up to the time of the surrender or canceling and annulling thereof, and a full and fair compensation for the tools, materials and implements necessarily procured for the purpose of performing such contract, and which shall be delivered to the canal commissioner in charge of the division, for the use of the state.

Contractors not to receive compensation or damages, except for permanent improvements, tools, materials and implements.

§ 532. (*Same ch.*, § 5.) It shall be the duty of the canal board to settle with any contractor for the repair of any portion of the canals whose contracts shall be surrendered or

Canal board to adjust amount to be paid.

canceled under the provisions of this act, and adjust the amount to be paid him in pursuance of the last preceding section, or, according to the terms of the contract, as the contractor may elect.

Canal board to determine system for repairs, etc., appoint patrolmen, etc.

§ 533. (*Same ch.*, § 6.) The canal board shall determine the method or system by which the repairs of the canals shall be made, and their management conducted, and fix the rate of compensation to be paid to any and all the officers which said board is now authorized by law to appoint. It shall be lawful for said board to appoint as many patrolmen, and fix the compensation to be paid them, as it shall deem necessary, to act as a police along the line of the canals, and whose duty it shall be to compel the observance of the laws and regulations of the canal board relative to the canals. Said patrolmen shall be assigned to such parts of the canals as the commissioner in charge shall direct, and shall be subject to and under the control of the said commissioner, and the officer in charge of the repairs of such portion of the canal, and may be removed by said commissioner and other patrolmen appointed by him in their stead, which removal and appointment shall be reported to the canal board within thirty days, in case said board shall meet within that time or at its next meeting thereafter for action thereon, but nothing herein contained shall be construed as authorizing the canal board to enter into any new contracts for keeping the canals in repair.

§ 534. (*Same ch.*, § 7.) The canal board shall have power to make such rules and regulations in relation to the canals, and especially to carry out the provisions of this act, as shall be deemed expedient and shall not be inconsistent with law, and to impose the like penalties and forfeitures for a violation of such rules and regulations as are now authorized by law. Nothing in this act shall impair or detract from the power and duties of the canal commissioners in the performance of their duties; but they shall, upon their respective divisions, which divisions shall not be changed or altered except with the consent and approval of the canal board, perform the duties and exercise the powers conferred upon them by law.<sup>1</sup>

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<sup>1</sup>For regulations in regard to patrolmen, see canal board proceedings 1870, p 171, and for resolution declaring it inexpedient to appoint patrolmen for 1871, see proceedings, p. 134, and Regulation No. 78 of this Manual.

## ENLARGEMENT, NEW WORK, AND EXTRAORDINARY REPAIRS.

§ 535. (*R. S.*, § 74.) Whenever the canal board shall have received from the canal commissioners, the plan of any extraordinary repairs or improvements on the canals, and an estimate of the expense thereof, if such estimate shall not exceed the sum of thirty thousand dollars, they may direct such repairs or improvements to be made; but if the estimated expense shall exceed that sum, they shall report the plan and estimate, together with their opinion thereon, to the legislature.<sup>1</sup>

Estimates  
for repairs.

§ 536. (1847, *ch.* 259, § 1.) Whenever, in the opinion of the canal commissioners, it becomes necessary to substitute new locks for the old locks on the Erie canal, the commissioners shall cause minute estimates to be made of the cost of rebuilding the lock or locks on the old plan, and also the cost of constructing the same on the enlarged plan, and adapting the work to the enlarged Erie canal; which estimates shall be submitted to the canal board, and when approved by that board, the canal commissioners shall proceed to construct the lock or locks on the enlarged plan; and all sums expended by them on such work, over and above the cost of reconstructing the lock or locks on the old plan, shall be paid out of moneys appropriated by this act for the enlargement of the Erie canal; the balance of the cost thereof shall be charged to ordinary repairs.

Rebuilding  
locks, Erie  
canal.

§ 537. (*Same ch.*, § 2.) The rule established in the preceding section, in relation to locks, may be applied to all structures on the Erie canal; whenever, in the opinion of the canal board, the interests of the state, in reference to the enlargement and improvement of the Erie canal, renders such works necessary: provided that the commissioners of the canal fund have in their hands moneys appropriated by the legislature sufficient to pay the additional expense, beyond the sum which would be required for the ordinary repairs, in building the structures on the original plan.

§ 538. (1847, *ch.* 278, § 13.) All work connected with the enlargement and improvement of the Erie canal, done under

<sup>1</sup> Query: Is this section now in force? See Const. Art. VII, § 10, relating to power of the state to contract debts. Ch. 298 of 1864 seems to allude to this section.

contracts made by the canal commissioners shall be kept distinct as far as practicable from the ordinary repairs of the canal by superintendents. The regulations of the canal board made in compliance with the provisions of the preceding sections of this act shall apply to all proceedings of the canal commissioners and engineers in giving notice and receiving propositions in relation to any of the public works.<sup>1</sup>

No extra allowance to contractors.

§ 539. (1840, *ch.* 348, § 1.) The canal board shall not have the power to make extra allowances to contractors on any of the public works of this state, whose contracts shall be entered into after the passage of this act, but the said canal board is hereby authorized to cancel such contracts on the application of the parties thereto, for good cause shown, and to direct the canal commissioners to settle for the work done under the same, and relative prices according to the terms and conditions thereof, and the canal commissioners may immediately thereafter proceed to relet such work according to law.<sup>2</sup>

May not cancel contracts for enlargement and completion or repairs.

§ 540. (1859, *ch.* 495, § 1.) The canal board shall not have power to cancel any contract entered into for the enlargement and completion of the canals of this state, unless upon application of the contractor or contractors in cases where the state has failed to make payment according to the contract; nor shall the said board have power to cancel any contract entered into, pursuant to the laws of this state, to keep in repair any completed or uncompleted portions of the canals of this state; and neither the said canal board nor the canal commissioners, or either of them, shall have power to make any allowance to contractors, under contracts for keeping said canals in repair, beyond the sums stipulated to be paid by such contracts; and no abatement or allowance shall be made to any contractor of repairs, from the sum agreed to be paid by him to the state, for the boats, tolls, implements and materials embraced in the inventory exhibited at the letting, and attached to the contract for repairs.<sup>3</sup>

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<sup>1</sup> As to the powers since conferred on the canal commissioners to prescribe regulations as to lettings for new work and extraordinary repairs, see 1871, *ch.* 930, and 1872, *ch.* 850, in art. 2, *ante*, § 299.

<sup>2</sup> Sections 76, 77 and 78 R. S., relating to extra allowances, in certain cases, proof required, etc., etc., are repealed by this section.

<sup>3</sup> It has been held by the canal board that this section relates to enlargement and repair contracts only, and that the canal board has power to

§ 541. (1862, *ch.* 169, § 1.) All contracts for the enlargement and completion of the canals of this state, as contemplated by section three of article seven of the constitution, and not hereinafter provided for, shall be executed and performed in accordance with the plans, maps and specifications heretofore prescribed and adopted on or before the first day of September next after the passage of this act, and the accounts for the said enlargement and completion shall be closed as soon thereafter as may be, and no more work shall thereafter be done, or materials procured, under pretense of enlarging and completing said canals, and the same shall be deemed and considered finished and completed, and from that time all the powers and authority of the contracting board in relation to the enlargement, completion and construction of such canal shall cease.

Contracts for completion and enlargement not to be changed.

§ 542. (*Same ch.*, § 2.) After the passage of this act the canal board shall not have power to change the plan of finishing and completing the work of enlarging and completing said canals as heretofore fixed and determined by the resolutions of said board; nor shall the said board have the power to change the plan of construction of a completed canal, its banks, locks, waste-weirs, culverts, bridges, or any other structure or matter or thing connected therewith, except to allow and certify to such works of extraordinary repairs and improvements in a completed canal as is contemplated by the existing statutes of the state.

Canal board prohibited from changing plan of completing canals.

§ 543. (1866, *ch.* 836, § 9.) It shall be the duty of the canal board to cause to be inserted in all contracts for work or repairs on the canals, a clause requiring the contractor to pay

Contractors to pay damages in certain cases.

cancel contracts for new work or extraordinary repairs, under *ch.* 348 of 1849. See canal board proceedings, for 1869, pages 210 and 290, and 1872, page 124.

The report adopted August 6, 1872, contains the following construction of the statutes:

"Act chapter 348, § 1, Laws of 1849, gives the board such power; act chapter 495, Laws of 1859, § 1, does not repeal it, because that law relates to contracts for the enlargement of the Erie canal, and to repair contracts, and act chapter 169, Laws of 1862, § 1, and act chapter 55, Laws of 1870, § 1, repealed all there is of § 1, chapter 495, Laws of 1859, and leave the law of 1849 operative only."

As to abandonment of contracts on Chenango extension, see opinions attorney-general, Sept. 4th and Oct. 10th, 1867.

all damages arising to the state, or to any individual, by reason of the negligence, default or misconduct of such contractor in the performance of such contract.

PROCEEDINGS, APPEALS, ETC.

Swearing  
witnesses.

§ 544. (1829, *ch.* 368, § 9.) Any member of the canal board is hereby authorized to administer oaths to witnesses on all matters which may be examined before said board; and willful false swearing before said board is hereby declared to be perjury.

Canal  
board may  
require  
witnesses  
to attend.

§ 545. (*Same ch.*, § 10.) The canal board may require the attendance of witnesses before them on the part of the state, if, in their opinion, the interests of the state require it; and for that purpose they may issue subpoenas, to be signed by their president for the time being, which shall be served by any sheriff or constable by said board thereunto required; and every person duly subpoenaed to attend before said board who shall willfully neglect to obey such subpoena, shall forfeit fifty dollars, to be recovered with costs of suit, before any court having cognizance thereof.

Expenses.

§ 546. (*Same ch.*, § 11.) The canal board may allow and direct the canal commissioners, or commissioners of the canal fund, to pay to any officer such board may require to serve subpoenas, or to witnesses attending in pursuance of such subpoena, such sum as they may deem just and reasonable for such service or attendance.

Three may  
take testi-  
mony.

§ 547. (1841, *ch.* 160, § 4.) Any three members of the canal board, designated by the said board, shall be competent to take and reduce to writing any testimony offered to the board in relation to claims for extra allowances to any contractor.

Assent of  
five mem-  
bers when  
necessary.

§ 548. (1854, *ch.* 332, § 1.) The assent of five members of the canal board shall be requisite to the adoption of all questions or resolutions involving the expenditure or appropriations of the public moneys, and all such questions or resolutions shall be taken by ayes and noes, and entered upon the minutes.

Minutes to  
be pub-  
lished.

§ 549. (*Same ch.*, § 2.) It shall be the duty of the secretary of the canal board, to cause to be published, in the state daily

paper at Albany, the minutes of said board as soon as may be after each session.

§ 550. (*Same ch.*, § 8.) Any person guilty of false swearing Perjury. to any oath or affidavit which may be lawfully required by any rules and regulations of the canal board, canal commissioners or auditor, shall be deemed guilty of perjury, and on conviction be punished the same as in other cases of perjury.

§ 551. (1829, *ch.* 368, § 6.) The appraisers shall make return Return to appeal by appraisers. in writing, to every appeal so served on them, setting forth a copy of the claim for damages; a transcript of the evidence, if any; the items on which allowances were made, and the several amounts; the items, if any, on which no allowance was made; and the reasons and grounds on which their decision is made.

§ 552. (*Same ch.*, § 7.) It shall be the duty of the canal board to meet, from time to time, and decide on all cases of appeals made from the decisions of the appraisers; and if, in their opinion, the interest of the state requires it, they shall direct the attendance of the appraisers, or either of them, to give evidence in relation to the subject-matter of the appeal; they shall decide all cases of appeal on the evidence or information contained in the transcript furnished by the appraisers, and the evidence of the appraisers, if any is obtained. Duty of canal board on appeals.

§ 553. (1840, *ch.* 201.) The canal board are hereby authorized to grant a rehearing, in any case they now are, or may hereafter be, authorized to adjudicate, whenever, in their judgment, the justice of the case may require it; but no party shall be entitled to but one rehearing, and the adjudication upon such rehearing shall be final and conclusive; but no such rehearing shall be granted, unless application in writing shall be made therefor, within sixty days after such case shall have been adjudicated by the said board. Rehearing may be granted.

§ 554. (1849, *ch.* 352, § 4; *amended* 1866, *ch.* 836, § 8.) Whenever the canal board shall, upon the hearing of any appeal from the award of the canal appraisers, reverse or modify such award, they shall state on the resolution or order relating to said appeal, the grounds of such reversal or modification, and how much, if any, such award is increased or diminished; and a copy of such resolution or order shall be immediately Provision relating to reversal of awards of appraisers. 24 N. Y. 533.

filed with the canal appraisers, and also a copy of every resolution of affirmance. The canal board shall also have power to order a rehearing before the canal appraisers, in the nature of a new trial before the canal appraisers.<sup>1</sup>

Surplus  
waters.

§ 555. (*R. S.*, § 75.) Whenever, in the opinion of the board, any water may be spared from any state canal, or works connected therewith, without injury to the navigation or safety of such canal, and the persons entitled to the first privilege of taking such water, shall not avail themselves thereof, or there shall be no person so entitled, the board may order a sale of such surplus water, for a term of years, in their discretion, to the person who shall bid the highest annual rent therefor.<sup>2</sup>

#### APPROPRIATION AND SALE OF LANDS.

Land  
when to be  
surveyed  
and taken.

§ 556. (1849, *ch.* 352, § 1.) Whenever any tract or parcel of land shall be divided by the location or enlargement of any of the canals of this state, and the canal board shall be of opinion, that it is necessary for the public use, to take and appropriate either portion of such land, the canal commissioners shall cause a survey and map of such portion of such land to be filed in the office of the clerk of the county where such land is situated, and thereupon, the title to such portion of land shall vest in the state in the same manner as other land taken by the state for the construction of the canal.

§ 557. (*Same ch.*, § 2.) The owner of any land taken by the state as provided in the last section, shall be entitled to compensation and damages for the lands so taken, to be ascertained and appraised in the same manner as for lands taken and appropriated for the construction of the canal.

Lands  
taken for  
canals may  
be sold.

§ 558. (*Same ch.*, § 3.) Whenever the canal board shall, by resolution determine that any lands taken for the purposes of the canal, may be sold beneficially to the state, the commissioners of the land office may sell, grant and convey the right, title and interest of the state in such lands, and the proceeds of such sale shall be credited to the fund appropriated for the construction of the canal for which such lands were taken.

<sup>1</sup> As to new trials under special acts, see 1868, *ch.* 579, and canal board proceedings, 1872, page 192, *ante*, § 465.

<sup>2</sup> For proceedings under this section, see Art. 5 of this chapter, *post*, § 589



§ 559. (1857, *ch.* 267, § 1.) Whenever the canal board shall by resolution determine that any lands taken for the purposes of the canals of this state have been abandoned, and that the title of the state to said lands was acquired by purchase from the owner or owners, it shall and may be lawful for the commissioners of the land office to sell, grant and convey the right, title and interest of the state in such lands, and credit the proceeds of such sale to the fund appropriated for the construction of the canal enlargement, improvement and repairs of the same; and in case it shall appear that the title of the state to said lands was acquired by grant or otherwise from the owner or owners, and without the payment of any sum or sums whatever by the state for such lands, it shall and may be lawful for the commissioners of the land office to release all the right, title and interest of the state in and to such lands to the persons so granting the said lands to the state, or from whom the title was acquired by the state, to his or their heirs, grantees or assigns, upon and subject to such rules, regulations and requirements as may be deemed for the interest of the state; *Provided*, that where any of such lands shall, at the time of abandonment, be used as or for a hydraulic canal, the conveyance shall not in any respect prevent the future use of the land for the same purpose, but shall expressly reserve the right to continue such hydraulic canal.<sup>1</sup>

Sale of right and title to lands where canals have been abandoned.

Rules and regulations.

§ 560. (*Same ch.*, § 2.) The original owner or owners of said abandoned canals, their heirs or assigns, who may be the owners of the lands adjoining thereto, shall have the preference for one year subsequent to the passage of said resolution by the canal board, to purchase the same by payment to the commissioners of the land office of the amount originally paid by the state for said lands.

Original owners to have preference.

§ 561. (1869, *ch.* 361, § 1.) The act entitled "An act in relation to abandoned canals," passed April sixth, eighteen hundred and fifty-seven, being chapter two hundred and sixty-seven of said laws, shall apply, and is hereby declared to extend to cases in which the land at the time taken for canal purposes was owned by the state, but with the adjoining lands were subsequently conveyed by the state without any express

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<sup>1</sup> For rules and directions to applicants for grants of abandoned canal lands, see chap. IX, title 5, "*Of the public lands,*" etc., *ante*, § 200.

reservation of the portion covered by the canal, so that under the said law the grantees of the state, their heirs and assigns, shall stand in the same position with respect to abandoned canals, as the like representatives of individuals hold and enjoy, provided they shall pay therefor such sum or sums as the commissioners of the land office shall deem just and equitable.

§ 562. (*Same ch.*, § 2.) Nothing herein contained shall be considered as applying to any abandoned canal heretofore sold and conveyed by the state; nor to any dry docks built by permission of the state within the canal blue lines in the city of Oswego.

## ARTICLE V.

### OF WATER PRIVILEGES, AND THE SALE OF SURPLUS WATERS.

SECTION 580. Canal commissioners to agree with owners of hydraulic privileges for surplus waters.

581. When surplus waters are created by constructing dams, etc., persons owning works contiguous thereto, may use such waters, upon complying with certain conditions.

582. Value of such waters to be estimated by appraisers.

583. If such owners refuse to comply with conditions, not to have use of waters.

584. Commissioners may resume use of waters when necessary.

585. Rights of owners of hydraulic privileges not to be affected until damages are paid.

586. Canal commissioners to settle with lessees of surplus waters for waters resumed.

587. Owners of hydraulic works, in certain cases, entitled to surplus waters.

588. Canal board may order sale of surplus waters for a term of years.

589. Owners of lands over which surplus water flows and adjoining dams, entitled to surplus water.

590. Value, how ascertained; value of former use of water, how ascertained, and when to be paid.

591. How right of such owners to surplus water may be waived or forfeited.

592. Qualifications of preceding sections; not compulsory to close raceways or gates. Sale of surplus waters not to be made in certain cases.

593. Manner and terms of sale of surplus waters.

594. Canal board to revoke former leases in certain cases.

595. When partial resumption of waters, purchaser entitled to what is not resumed.

596. Where stone walls should be made and the manner of erecting.

- SECTION 597.** Waste-gates, sluice, slide, etc., when and where to be erected.
598. Penalty for injuring or lowering stone walls.
599. Persons owning water privileges, to discharge waters as directed by commissioner.
600. Penalties for drawing water from the canals without authority.
601. Sluices around locks. Waters not to be used for hydraulic purposes without authority of law.
602. Surplus waters on Oswego river, how to be used.
603. Water not to be drawn on to the Syracuse level, except as herein specified. Penalties.
604. Commissioners, or party grieved, may bring writ of error from decision of supreme court, in relation to water privileges.
605. Duty of clerk of supreme court, on being served with writ of error.
606. Canal commissioners authorized to prescribe manner of erection of piers, warehouses, etc., in Black Rock harbor; proviso.
607. Condition on which such erections shall be made.
608. Grants to erect warehouses, mills, or buildings, and to use water, to adjoining owners. Exception.
609. Lease to be executed. Copies, where filed.
610. Plans and dimensions of said erections to be approved by commissioners.
611. Resolution of April 25, 1831, not to be impaired.
612. Proceedings on non-payment of rent on leases at Black Rock harbor.
613. Action of canal board confirmed.

## OF WATER PRIVILEGES AND SURPLUS WATERS.

§ 580. (*R. S.*, § 79.) Whenever it shall become necessary to secure to any state canal an additional supply of water, the canal commissioners may agree with the proprietors of hydraulic privileges, affected by their proceedings, relative to the use of the water privileges to be created, and of the surplus water, in such manner as they shall deem most beneficial to the state.

Agree-  
ments re-  
specting  
use of  
water  
privileges.

§ 581. (*R. S.*, § 80.) Whenever the canal commissioners shall construct a dam across any river or creek, to raise a head of water for the use of a canal, by means whereof any works adjacent to such river or creek, in which water power is employed, before such time legally used, may be benefited without prejudice to the canal, the owner of such works, for their benefit, shall be entitled to the use of the surplus water, upon his complying with the following conditions:

Who en-  
titled to,  
in certain  
cases and  
condi-  
tions.

1. He shall construct, under the direction of the canal commissioners, a good and substantial race-way and gate in such

dam, to draw off as much of the surplus water as his works may require.

2. He shall give such security to the people of this state as the canal commissioners shall deem sufficient, to keep such gate and race-way in complete repair, so as to prevent any waste of water.

3. He shall, within ninety days after such race-way and gate shall be completed, apply to the canal appraisers, and request them to ascertain the benefits accruing to him from the use of such dam or other erection.

4. Within ninety days after such benefits shall have been so ascertained, he shall pay the sum at which they shall be estimated into the treasury.

**Appraisal.** § 582. (*R. S.*, § 81.) It shall be the duty of the canal appraisers, when so required, to make a fair estimate of the benefits so accruing to such owner, and to make a return thereof, without delay, to the treasurer of the state.

**Duty of owners.** § 583. (*R. S.*, § 82.) If the conditions, as above specified, shall not be fulfilled by such owner, it shall be the duty of the acting canal commissioner, to close any race-way or gate such owner may have constructed; nor shall the owner again open the same, or any other in the same dam, unless upon the performance of the conditions so imposed.

**When to be resumed.** § 584. (*R. S.*, § 83.) The canal commissioners may resume the privileges so granted, whenever, in their judgment, the surplus water, or a portion thereof, shall become necessary for the use of the canal; but whenever such privileges shall be so resumed, the sum paid into the treasury therefor shall be refunded.

**Construction of this article.** § 585. (*R. S.*, § 84.) Nothing in this article contained, shall be construed to deprive the owner of hydraulic privileges, of any rights possessed by him, prior to any grant from the state under this article, unless his damages from the loss of such rights, shall be duly assessed and paid.

**Damages to be settled.** § 586. (1838, *ch.* 289.) The canal commissioners are hereby authorized to settle with all persons claiming damage on account of any surplus waters of the canals of this state being resumed by the commissioners for the use of the canals, or for other purposes, or on account of not being allowed in whole

or in part of any surplus waters sold and leased to such claimants; and on canceling such leases and claims, to pay to the claimant out of the canal fund, such sum of money as may be mutually agreed on between them.

§ 587. (*R. S.*, § 85.) In all cases where water or mill privileges, before legally used, have been or shall be injured by reason of the diversion of the water to the use of either of the canals, the persons so injured shall be entitled to the first privilege of taking water for the use of their works, on the terms and conditions above specified, from any work constructed for the purpose of such diversion, or from the canal itself benefited thereby, when there is a surplus of water, and with the consent of the canal commissioners.

Preference  
in the use  
of water.

§ 588. (*R. S.*, § 75.) Whenever in the opinion of the [*canal*] board, any water may be spared from any state canal or works connected therewith, without injury to the navigation or safety of such canal, and the persons entitled to the first privilege of taking such water, shall not avail themselves thereof, or there shall be no persons so entitled, the board may order a sale of such surplus water, for a term of years, in their discretion, to the person who shall bid the highest annual rent therefor.

Lease of  
surplus  
water.

§ 589. (*R. S.*, § 86.) Whenever the canal board shall order a sale of surplus waters, pursuant to the provisions of the seventy-fifth section of this title, to the use of which no person shall be first entitled as the owner of works before such time legally used, according to the preceding eightieth section, the owners of the land upon which such surplus waters shall flow, and the owner of land adjoining any dam erected by the canal commissioners, by which surplus water shall be created, shall be entitled to the first privilege of taking such waters, subject to the provisions of this article so far as the same may be applicable; and the canal commissioners shall have the same powers in relation to all such surplus waters, as are herein given in respect to surplus water by which hydraulic privileges are benefited.

Who en-  
titled to  
surplus  
waters.

§ 590. (*R. S.*, § 87.) Whenever the owner of any land over which surplus water shall flow, or the owner of land adjoining any dam by which surplus water shall be created, entitled according to the last section, to the use of such water, shall

Value,  
how ascer-  
tained.

Value of  
former  
use.

apply for a lease of the same, the canal commissioners shall direct the canal appraisers to estimate the value of the use of such water; and the said appraisers shall include in such estimate, the value of any use of such water, which such owner may have had previous to obtaining a lease therefor; and within ninety days after such appraisal shall have been made, and notice thereof given to such owner, he shall pay the amount of the value of such previous use, into the treasury.

How right  
waived or  
forfeited.

§ 591. (*R. S.*, § 88.) If any owner of land over which such surplus water shall flow, or if any owner of land adjoining any dam by which surplus water shall be created, shall omit for three months after being notified by the acting canal commissioner to that effect, to apply for a lease of such water, or shall neglect to comply with any of the provisions of this article, the canal board shall order a sale of such surplus water.

Qualifica-  
tions of  
preceding  
sections as  
to race-  
ways, etc.

§ 592. (*R. S.*, § 89.) But in cases, where in the opinion of the acting canal commissioner, it would be inexpedient to close any race-way or gate, it shall not be compulsory on him to do so; and where, in the opinion of the canal board, a lease of surplus waters, will not confer on the lessee, any right or authority to use the same without the consent of the owner of the land over which such surplus water shall flow, they shall not authorize the letting of the same, without evidence, that the consent of such owner has been given to such use.<sup>1</sup>

Proceed-  
ings in  
sale of  
water.

§ 593. (*R. S.*, § 90.) Whenever a sale of surplus water shall have been directed by the canal board, the acting canal commissioner within whose line such water shall fall, shall proceed to sell and convey such surplus water in the manner following:

1. Each privilege of using such water shall be sold separately, at public auction, to the person bidding the highest annual rent therefor.

2. The place of sale shall be in the vicinity of the place where the water may be most conveniently used.

3. A notice, stating the time and place of the sale, and describing the waters to be sold, shall be published twice in each week, for six weeks in succession, immediately preceding the sale, in the state paper, and once in each week for the

<sup>1</sup> Laws of 1828, ch. 317, made part of *R. S.* by § 6, p. 428.

same time, in each of the newspapers printed in the county where the water is to be sold.

4. A lease for such a term of years as shall have been directed by the canal board, shall be executed by the commissioners, in the name of the people of this state, to the purchaser, and in such conveyance, the rent bid by such purchaser shall be reserved.

5. The conveyance shall contain a covenant, that the rent therein reserved, shall be paid annually to the commissioners of the canal fund, and a condition, that if such rent shall remain unpaid for one year after it shall become due, the grant or lease shall become forfeited to the state.

6. The conveyance shall also contain a reservation of the right, wholly to resume the water so conveyed, and the privileges thereby granted, and to control and limit the use of such water and privileges, whenever, in the opinion of the canal board, or of the legislature, the necessary supply of water for the use of any state canal, or the safety of such canal, or works connected therewith, shall render such resumption, control or limitation necessary; and a provision that where such resumption is made, or control or limitation imposed, no compensation or damages shall be allowed for any improvements or erections made in consequence of such grant or lease.

7. The conveyance shall contain a further reservation of the right of the state, without making any compensation to the purchaser, wholly to abandon or destroy the work, by the construction of which, such surplus waters shall have been created, whenever in the opinion of the canal commissioners, the occupation and use of such work shall cease to be advantageous to the state.

8. A duplicate of such conveyance, under the hand and seal of the purchaser, shall be executed and delivered by him to the acting canal commissioner, who shall, without delay, procure the same to be recorded in the clerk's office of the county, in which the water sold shall be situated, and shall transmit it, when recorded, to the commissioners of the canal fund.

9. All the expenses attending the execution of the conveyances, and the recording thereof, shall be paid by the purchaser.<sup>1</sup>

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<sup>1</sup> For list of leases and grants of surplus waters, at Black Rock, Lockport, Syracuse, West Troy, Waterford, Glen Falls, and other points on

Canal board, when to revoke former leases.

§ 594. (*R. S.*, § 91; *modified* 1848, *ch.* 162.) When the canal board shall be satisfied that any lease of surplus waters granted by the canal commissioners, or either of them, before the twenty-first day of April, one thousand eight hundred and twenty-eight, is invalid, or conveys no right to use such waters, and may expose the state to claims for remuneration, they may revoke and annul such lease, and may direct the repayment to such lessee, of any moneys received on such lease, with interest from the time of such payment; which shall be paid accordingly, on the warrant of the [auditor], from the canal fund.<sup>1</sup>

Right of purchaser on resumption.

§ 595. (*R. S.*, § 92.) Where there shall be a partial resumption only of the waters so sold, the purchaser shall be entitled to the use of the remaining water privileges for the residue of his term, on the payment of such reduced rent as shall be fixed by the canal board; but if he shall refuse to accept thereof, at the rent so reduced, the privileges so remaining, shall be again sold by the canal commissioners, under the direction of the canal board.

Walls to be erected.

§ 596. (*R. S.*, § 93.) At every place where waters are to be taken from any state canal, or work connected therewith, for hydraulic purposes, except at Black Rock, at the mouth of Tonnewanta creek, and at the locks at Lockport, and except where such waters are taken from a dam across a stream which is used as a feeder, or from a feeder not navigable, the canal commissioners shall construct a permanent wall or erection of stone laid in mortar, and cemented, of sufficient thickness to insure the safety of the canal, and such wall shall not in any case be more than six inches lower than the top-water line of the canal.

No waste-gates, etc., in them.

§ 597. (*R. S.*, § 94.) No waste-gate, sluice, slide, water-gate or other passage, shall be made in connection with any wall or

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the canals of this state, with statements of the quantity of water leased or granted, the amount used, and its effect upon navigation, and for copies of laws, leases and grants relating thereto, see report of Hon. T. G. Younglove and others, a special committee, appointed by the legislature of 1869, "to examine into the leases and uses of the surplus waters of the state canals." Assembly Documents, 1870, Vol. 7, No. 139. See also, canal board proceedings, 1871, p. 82, and Laws 1868, ch. 451.

<sup>1</sup>As to use of water at Waterford mills, see canal board proceedings March 21st, 1865; Oswego cases, 1870, p. 48.

For damages, for diversion of surplus waters at Lockport, from 1838 to 1859, see Laws of 1860, ch. 414.



erection over which water is to be drawn, in such a manner that the same can be opened, or that water can be drawn by, through or under the same, to the use of any mill or machinery, using water from the canal, except at the four places above excepted.

§ 598. (*R. S.*, § 95.) Any person who shall willfully make, or cause to be made, any breach, hole or passage in, through or under any such wall or erection, or who shall lower the same, or cause it to be done, for the purpose of drawing water to any mill or machinery, or the effect of which shall be to lower the water in the canal, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offense not to exceed two hundred and fifty dollars, nor the imprisonment six months. Penalties.

§ 599. (*R. S.*, § 96.) Every person now owning any water privilege upon either of the canals, or hereafter purchasing any such privilege of the state, shall discharge the waters owned by him at such place or places, as the canal commissioners shall direct, whenever the navigation or safety of the canal, or any of its works, shall be benefited by such direction. Water,  
how dis-  
charged.

§ 600. (1860, *ch.* 213.) Any person or persons who shall draw water from any canal in this state, or from any of their feeders or reservoirs, during the navigable seasons of the canals, to the detriment or injury of the navigation thereof, without authority of law, shall be deemed guilty of a misdemeanor, punishable by imprisonment in the county jail not less than one year, and by fine not less than one thousand dollars, one-half of which shall belong to the complainant, and the other half to the canal fund; and every officer, agent and employee of the state, and every contractor for canal repairs, and every contractor for canal repairs, and every person in his employ, and every and any other person having any charge or control over the canals of the state, or any part thereof, or of any lock, waste-weir, or other work belonging thereto, or over the water or navigation thereof, who shall directly or indirectly receive or agree to receive any money or other valuable thing, and every person who shall pay or deliver, or offer or promise to pay or deliver, directly or indirectly, to any such officer, agent or employee of the state, or to any such contractor for canal repairs, or any person in the employ of such contractor, Penalty  
for draw-  
ing water  
from  
canals.

or to any other person having any charge or control over the canals of the state, or the locks, waste-weirs or works, or the water or the navigation thereof as aforesaid, any money or other valuable thing in consideration of or as an inducement for drawing water from any canal, feeder or reservoir belonging to the state; to propel any machinery, or for any hydraulic or other purposes, or from one level to another in any canal in order that such water may be so discharged, shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be punished in the same manner and to the same extent as is heretofore provided in this section for like offenses.

Waste-weirs and races, etc.

§ 601. (1834, *ch.* 312, § 2.) The said commissioners are authorized to construct all such waste-weirs and races or water ways, as they shall deem necessary and proper, to conduct the waters designed for the use of any of the state canals around any lock or locks therein: but they shall not permit the water passing around any lock from one level of the canal to another, to be used for hydraulic purposes, except the same be taken and used under or by virtue of a grant or lease thereof authorized by law.<sup>1</sup>

Surplus waters, Oswego river.

§ 602. (1839, *ch.* 316, § 1.) The canal commissioners are hereby authorized to permit the surplus water flowing over any of the dams on the Oswego river, to be used for hydraulic purposes, by the owners of the lands, over or upon which such waters may flow, under such regulations and restrictions as they may impose, and subject to be resumed, in whole or in part, whenever they shall think proper, without any right of the persons receiving such permissions to claim any damages or compensation for such resumption; but such permission shall not be given to use any water on the levels of the said canal, nor the water at the dam nearest the village of Oswego.

Water not to be drawn on Syracuse level, etc.

§ 603. (1861, *ch.* 124, § 5.) It shall not be lawful for any person or persons to draw water on to the Syracuse level, from any other level of the Erie canal, during canal navigation, except what is necessary in lockage of boats, the filling of the

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<sup>1</sup> This section is from the first law for doubling the locks and adapting the canal to the use of the double locks from Albany to Syracuse. The latter clause seems to be still in force.

1868, *ch.* 451, provides for leasing waters at the Fort Edward lock, under certain conditions and restrictions. As to surplus waters on the Glen Falls feeder, and at Arcadia on the Erie canal, see Laws of 1848.

level in the spring, and in case of breaks thereafter except by the special direction of the canal commissioners or the state engineer and surveyor, and then only when the level, from which such water is drawn, contains at least seven feet in depth of water. Any person or persons who shall draw or use water in violation of the provisions of this section, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment for each offense; the fine not to be less than five hundred dollars or exceeding one thousand dollars, and the imprisonment not to exceed two years in the county jail; one-half of the fine to belong to the complainant, and the other half to the canal fund. Penalty.

§ 604. (*R. S.*, § 97.) The canal commissioners, or the party aggrieved, may bring a writ of error from any decision of the supreme court hereafter to be made, touching any claim made against the state, for deprivation of any right, or pretended Error for decisions of supreme court.

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NOTE.—*West Troy Arsenal*—1830, ch. 322, cedes the jurisdiction of certain lands in the town of Watervliet to the United States, “but always excepting and reserving out of the lands above described, the land occupied by the Erie canal, one rod on each side thereof, and also the public highway.”

Another grant made in 1833, ch. 96, reserves out of the lands described “one rod in width along the west side of the Erie canal.”

Under a concurrent resolution, 1831, page 438, the canal board, April 16, 1833, made with the United States authorities, an agreement for the use of water from the Erie canal, for the arsenal at West Troy. See Assembly Doc., 1869, vol. 10, No. 185, and Senate Doc., 1870, vol. 7, No. 139.

The consideration for this permission to use water was the construction and maintenance of the canal walls and bridges by the United States within the arsenal grounds.

The permission was in the following terms :

“*Resolved*, That the said commandant be and is hereby permitted to close the present waste-weir near the arsenal at Watervliet, and draw from the Erie canal, at or near the place where the said waste-weir is located, as much water as can be drawn over a waste-weir, which shall not be less than three and a half feet above the bottom of the canal, and six feet long, so far as the water therefrom may be taken without injury to the navigation and transportation on said canal, and on the limitations and conditions provided for in the canal law, Revised Statutes, part 1, chapter 9, title 9, article 5, section 90, Nos. 6 and 7, and on the further condition that he construct, at the expense of the United States, under the direction of the canal commissioner on that section of the canal, a waste-weir twenty feet long, and construct and forever maintain, at the expense of the United States, a race from the said waste-weir over the lands of the United States to the Hudson river.”

At this time the depth of the water in the canal was four feet. Since the adoption of the above resolution, the state has enlarged the canal, by which a depth of seven feet of water has been obtained.

right, to the use of any water or water privileges, or fisheries, in consequence of the construction of any canal or feeder, now or hereafter to be made, whether the decision be made upon any case arising upon a *mandamus* or otherwise; and although no pleadings were had or issue joined in the cause.

Proceed-  
ings.

§ 605. (*R. S.*, § 98; *modified* 1847, *ch.* 280, § 8.) On service of such writ of error it shall be the duty of the clerk of the supreme court, to make out a transcript of the record, or papers and documents, on which such decision was had, and to cause the same to be filed with the clerk of the [court of appeals] in twenty days after service of the writ.

Piers and  
ware-  
houses at  
Black  
Rock har-  
bor.

§ 606. (1836, *ch.* 384, § 1.) The acting canal commissioners are hereby authorized and directed, if in their opinion the public interest shall not be injured thereby, to prescribe the manner in which, and the places where, the owners of lands adjoining the Black Rock harbor, may build piers and warehouses, or make other erections, in or on said harbor, for the accommodation of lake vessels: *Provided*, that such piers, warehouses and other erections, shall be so made as not to interrupt the canal navigation through said harbor, nor otherwise interfere with the proper use of the waters of said harbor for public purposes.<sup>1</sup>

Condition.

§ 607. (*Same ch.*, § 2.) The authority hereby given, is on condition that if said piers, warehouses and other erections shall hereafter be found incompatible with the public interest, the same shall be removed when required by the legislature.

Rights  
may be  
granted to  
erect  
buildings,  
etc., on  
dams and  
use the  
water.

§ 608. (1840, *ch.* 292, § 1.) Whenever the canal commissioners shall construct, and in every case where they have heretofore constructed any dam, pier, mole or other work in any canal, lake, river or other body of water, the canal board is hereby authorized and empowered to grant permission to such extent and on such terms, conditions and stipulations as said board may deem proper, to any person to erect on such dam, pier, mole or other work, any warehouse, mill or other building, suited and intended to be used for commercial or manufacturing purposes, or for any purpose incidental and auxiliary thereto, and to use such amount of water power created by such dam, pier, mole or other work, as may in the

<sup>1</sup> For previous legislation, see 1825, *ch.* 277, § 3; 1826, *ch.* 314, § 24.

opinion of the canal board be so erected and used without injury to such dam, pier, mole or other work, and without detriment or obstruction to the public use thereof, or to the navigation of such canal, lake, river or other body of water therewith connected; but such permission as aforesaid, shall not be granted in any case other than the pier in the Niagara river at Black Rock, to any person who is not the owner of the land over which the water to be used flows, or the owner of the land adjoining the river or other stream of water at the place where any such dam, mole or other work is or shall be erected.

§ 609. (*Same ch.*, § 2; *modified* 1848, *ch.* 162.) Whenever the canal board shall grant any permission under this act, such permission shall be expressed by a resolution of said board entered at full length on its minutes, and including all such terms, conditions and stipulations as the board may deem expedient, and such permission shall be executed by a written lease, in duplicate, to be signed by the [auditor] in the name of the people of the state of New York, and by the lessee on the other part, and one duplicate of such lease shall be deposited in the canal room for the use of the canal board, and the other duplicate shall be delivered to the lessee; and a copy thereof, or of the resolution aforesaid, certified by the clerk of the canal board, shall in all cases be evidence equally and in the same manner as the original.

Orders to be made and entered on the minutes at full length.

Lease.

§ 610. (*Same ch.*, § 3.) Every building erected by the permission of the canal board under this act, shall be erected on such part of any dam, pier, mole or other work, and shall be constructed on such plan, and shall not exceed such dimensions as may receive the approval and consent of the board of canal commissioners, and be by them specified in a written resolution, to be entered at full length in the minutes of that board, and a copy of such resolution certified by the secretary of said board with the written assent of the lessee thereto annexed, shall be delivered by the said secretary to the clerk of the canal board, to be deposited in the canal room before the delivery of the lease mentioned in the preceding section. A copy of such resolution of the board of canal commissioners, certified by the secretary thereof, shall in all cases be evidence equally and in the same manner as the original.

Buildings where and how to be constructed.

Limita-  
tion.

§ 611. (*Same ch.*, § 4.) This act shall not impair the restriction as to leasing surplus waters, made by joint resolution of the senate and assembly, passed April 25, 1831.<sup>1</sup>

Proceed-  
ings in  
case of  
non-pay-  
ment of  
rent.

§ 612. (1842, *ch.* 274; *modified* 1848, *ch.* 162.) Whenever any lease for surplus waters of Black Rock harbor, may become liable to forfeiture in consequence of the non-payments of the rents due thereon; before declaring the same forfeited, the [auditor] shall give at least six months' notice, in two newspapers published in the county of Erie, that the same will be forfeited unless the rents due shall then be paid, with the costs of such advertising; if the rents shall not then be paid, the canal board may direct that any separate privilege of taking and using water included in such lease, the rent on which separate privilege has been regularly paid, which shall be occupied and applied to any machinery, shall be separately exposed to sale; or they may require the canal appraisers to estimate and appraise the value of such separate privilege, having reference to the terms of the original lease and subject to the approval of the canal board; and upon receiving such appraisal the canal board may sell such privilege to the person so occupying the same, as shall be deemed just and equitable, under the circumstances, and may thereupon cause a lease for such privilege to be executed according to law.<sup>2</sup>

§ 613. (1873, *ch.* 766, § 1.) The action of the canal board, at a meeting thereof, held on the eighth day of November, eighteen hundred and seventy-two, in adjusting the rent due the state, from the holders of leases of surplus waters of the

<sup>1</sup> Concurrent Resolution, 1831, p. 437, as follows :

IN ASSEMBLY, *April 23, 1831.*

*Resolved* (if the senate concur herein), That the canal commissioners do suspend all further proceedings under the statute authorizing the leasing of the waters of the canals, and of any works appendant thereto.

IN SENATE, *April 25, 1831.*

*Resolved*, That the senate do concur with the assembly in said resolution, with an amendment by adding thereto the words following, to wit: "Ex cept the surplus waters at Black Rock, and at the Troy dam." See, also, proceedings canal board, Feb. 21, 1866.

<sup>2</sup> For a full report on use of surplus waters at Black Rock, see Assembly Documents, 1870, vol. 7, No. 139, pp. 10, 61 and map; also canal board proceedings, April 11, 1866, and Auditor Bell's report on leases outstanding, 1871, p. 82, and resolution of canal board as to payments upon leases at Black Rock up to 1861. (Proceedings, 1872, p. 167.)

Erie canal at Black Rock, is legalized and confirmed, and the four thousand and eight hundred dollars paid by the owners of such lease in pursuance of such settlement, are accepted in full payment and settlement of the rent due on account of all leases of surplus waters of the Erie canal at Black Rock, up to and including the year eighteen hundred and seventy-two; but the owners of such leases shall not, by virtue of any thing herein contained, be released from the payment of rent accruing by virtue of the terms of their leases on and after the year eighteen hundred and seventy-two.

## ARTICLE VI.

### OF THE SUPERINTENDENTS OF REPAIRS, AND THE COLLECTORS OF TOLLS.

SECTION 620. Superintendents of repairs and collectors of tolls shall give bonds.

#### SUPERINTENDENTS.

621. Duty of superintendent.
622. Shall be under direction of canal commissioners.
623. Shall make detailed estimates of anticipated objects of expenditures.
624. Commissioner to certify thereto, in whole or in part, and the auditor to advance the amount certified.
625. Materials and tools how purchased.
626. Contracts for materials, etc., to be in writing and filed in canal department.
627. Commissioner to certify to his approval or dissent as to each object of expenditure named in detailed estimate.
628. Canal commissioners to fix rates of compensation for labor.
629. Tools, materials, etc., how purchased; superintendents to be removed who do not observe all the directions of detailed estimates.
630. To account to the auditor as often as once in sixty days; duty of auditor in case of neglect, etc.
631. Account to be certified by commissioner before presented.
632. To cause noxious weeds to be cut.
633. Consequence of neglect.
634. To give personal and constant attention to their duties.
635. To take receipts only for actual payments.
636. Purchases to be made for cash; vouchers to be filled up at the time they are taken.
637. To appoint lock-tenders, foremen, etc.
638. Abstract of expenditures to be published monthly; expenses of publishing, how paid.
639. To file abstract in certain cases in clerk's office.

SECTION 640. Auditor to prescribe form of abstracts; blanks to be printed, etc.

- 641. Certificate of filing to be sent to auditor.
- 642. Abstract filed to be subject to public inspection.
- 643. Eight-hour law.
- 644. To whom it applies.
- 645. Penalty for violation.
- 646. Contractors violating, to forfeit contract, etc.
- 647. May enter on lands, take materials, and destroy or remove boats, etc., in certain cases.

#### COLLECTORS OF TOLLS.

- 650. To keep account of tolls received.
- 651. To make abstracts of daily receipts and send auditor weekly.
- 652. To deposit every two weeks money received, in banks designated by canal board.
- 653. Banks to transmit monthly account to auditor
- 654. May refund tolls erroneously paid.
- 655. Omitting to deposit tolls; auditor to issue warrant upon his property and that of his sureties.
- 656. Sheriff, to whom warrant is directed, to execute immediately.
- 657. Office of assistant collector abolished.
- 658. No power to hire offices without consent of canal commissioner; not to select any person to measure or inspect timber or lumber.
- 659. Compensation to be fixed by canal board at time of appointment; not to employ clerks except as certified by auditor.
- 660. Ten inspectors and measurers of lumber and timber, etc., to be appointed by canal board.
- 661. They are authorized to administer oaths.
- 662. Collectors not to give credit for tolls.
- 663. Collectors and weigh-masters to reside at places where offices are located; weigh-masters to enter light weight of boat on clearance; penalty for making false entry.
- 664. Collector in New York not to give clearance till harbor-master's fees are paid; may be paid to collectors.

#### OF SUPERINTENDENTS AND COLLECTORS.

To give  
bonds.

§ 620. (*R. S.*, § 99.) Each superintendent of repairs and every collector of tolls, before he shall enter on his official duties, shall execute and file in the [canal department] a bond for the faithful execution of his trust, in such penalty and form as the canal board shall direct, and with such sureties as the [auditor] shall approve.

#### OF SUPERINTENDENTS.

Duty of  
superin-  
tendent.  
§ 4 N. Y. 389;  
4 Hill, 636;

§ 621. (*R. S.*, § 100.) It shall be the duty of each superintendent, under the direction of the canal commissioners, to keep in repair such sections of the canals and works connected



therewith, as shall be committed to his charge ; to make all necessary contracts for that purpose, and faithfully to expend all such moneys as shall be placed in his hands by the canal commissioners or the [treasurer on the warrant of the auditor].<sup>1</sup>

<sup>42 N. Y. 47 ;  
54 Barb.  
172.</sup>

§ 622. (*R. S.*, § 101.) Each superintendent shall be under the direction of the canal commissioners, and especially of the acting commissioner, having charge of the line of the canal, on which such superintendent is employed.

§ 623. (1837, *ch.* 451, § 7.)<sup>1</sup> Before any advance of money shall be made to a superintendent of canal repairs by the [auditor] he shall make out a detailed statement, in such form as the said [auditor] shall prescribe, of the several anticipated objects of expenditure on the line of the canal under his charge.

Detailed estimates.

§ 624. (*Same ch.*, § 8.)<sup>1</sup> If the said estimate shall be filed in the [canal department,] with the certificate thereon of the acting canal commissioner, stating that in his opinion, the whole amount or if less than the whole amount, what portion of the said estimate should be advanced [the auditor] may make advances on the same, in such sums, and as often as they may deem necessary ; provided such advances shall not exceed the amount certified by the commissioner.

To be certified and filed.

§ 625. (1849, *ch.* 363.) The canal commissioners are hereby authorized to direct the superintendents of canal repairs to purchase materials and tools for the ordinary repairs of the canals, without advertising for the same, whenever in their opinion the interests of the state will be promoted thereby ; and shall not be bound to accept proposals unless they deem it for the interests of the state.<sup>2</sup>

Materials and tools, how purchased.

§ 626. (1859, *ch.* 495, § 2.) All contracts entered into by any canal commissioner, superintendent of canal repairs, or engineer in charge of repairs, for the delivery of timber or lumber for the repairs of the canals, or to do or complete a specific job of work relating to such repairs, and involving the

Contracts for material.

<sup>1</sup> As modified by Laws of 1848, ch. 162.

<sup>2</sup> For provisions of ch. 278 of 1847, relating to the purchase of tools and materials for ordinary repairs, by advertising for sealed proposals, see article 2 of this chapter, "*Of the canal commissioners*," *ante*, §§ 328-335 and note.

performance of labor, and the furnishing of materials, when not advertised to be let to the lowest bidder, shall be in writing; and such contract, duly authenticated, shall, within fifteen days after the same shall be executed, and before any money shall be paid thereon, be filed in the canal department; and all such contracts shall state the time within which the same is to be performed and executed, which shall not exceed one year from the date thereof.

Statement  
of expen-  
diture.

§ 627. (*Same ch.*, § 8.) When any superintendent of canal repairs, or resident engineer having charge of such repairs, shall submit to the canal commissioner in charge the detailed statement of the several anticipated objects of expenditure on the line of the canal under his charge, it shall be the duty of such commissioner, if he dissents from any particular object of expenditure set forth in such estimate, in whole or in part, or if he shall consider the sum estimated for the objects named to be larger than will be required, to state, in writing, on the estimate, his allowance or disallowance of each particular object of expenditure named therein, and of the amount which in his judgment may be required for each work or object; and every such superintendent and engineer shall apply the sums so estimated and allowed to the work or object named in such estimate, and to no other purpose whatever. And all orders and directions given by any engineer to any contractor on the public works, during the progress of the same, and in relation thereto, shall be in writing.

Rate of  
compensa-  
tion for  
labor.

§ 628. (1866, *ch.* 836, § 1.) No superintendent of repairs shall pay a higher price or compensation to any foreman, lock-tender or other subordinate person necessary to enable him to discharge his official duties, nor for any double or single team, nor for any mechanical labor, than shall be fixed by the board of canal commissioners; and it shall be the duty of the said board of canal commissioners to fix, from time to time, the rate of compensation for the labor and service herein mentioned, and shall notify the several superintendents and the auditor of the canal department thereof, and no resolution of the said board, increasing the rates of compensation for labor and service beyond a price previously fixed, shall have a retro-active effect.

Certificate  
of canal  
commis-

§ 629. (*Same ch.*, § 3.) No superintendent of canal repairs shall have any authority to contract for the delivery of or to

purchase any tools, implements, materials, boats or other matter or thing to be used in the repairs of the canals, except upon the certificate of the canal commissioner in charge first had and obtained, designating the number and quantities with the price to be paid for such tools, implements, materials and boats; and every superintendent of repairs who shall violate the provisions of this section, or who shall apply any of the moneys received by him upon a detailed estimate, to objects, works or purposes other than what is specifically named and described in the detailed estimate upon which the moneys were advanced to him, shall be removed from office, and the canal board are hereby authorized and directed to hear and determine all complaints made against any superintendent of repairs for a violation of the provisions of this section, but the provisions of this section do not apply to sudden breaks and breaches in the canals during navigation, when the necessities of the case may call for immediate action before the canal commissioner can be consulted.

stoner  
necessary  
to all pur-  
chases.

Penalty for  
applica-  
tion of  
moneys  
otherwise  
than de-  
signated.

Exception.

§ 630. (*R. S.*, § 102.<sup>1</sup>) Each superintendent shall, as often as once in sixty days, render his account to the [auditor], who shall audit the same; and if any superintendent shall omit to render his account, or his account as rendered be not satisfactory, the [auditor] shall notify the canal board and the commissioners of the canal fund thereof; and no further advances of money shall be made to such superintendent, but he shall be immediately removed from office.

To account  
to auditor

§ 631. (*R. S.*, § 103.<sup>1</sup>) Before any superintendent's account for expenditures shall be presented to the [auditor], the canal commissioner having charge of that part of the canal on which such superintendent is employed, shall certify on such account that he has examined the same; that the several disbursements specified therein, were made under his direction on the canal, or for repairs necessary to be made thereon; and that he believes such disbursements to be proper and reasonable, and to have been made, as charged.

How veri-  
fied.

§ 632. (1847, *ch.* 100, § 1.) It shall be the duty of the superintendents of canals, to cause all Canada thistles and other noxious weeds, growing on the banks and sides of the

Superin-  
tendents  
to cause  
weeds to  
be cut.

<sup>1</sup> As modified by Laws of 1848, *ch.* 162.

canals, to the width owned by the state, to be cut down twice in each and every year, once between the fifteenth day of June, and the first day of July, and once between the fifteenth day of August and the first day of September.

Provision  
in case of  
refusal or  
neglect.

§ 633. (*Same ch.*, § 2.) If the said officers shall refuse or neglect to cause the same to be cut at the times as aforesaid, it shall be lawful for any person or persons, to cut the same between the first and fifteenth days of July, and between the first and fifteenth days of September, in each and every year, at the expense of the superintendents having charge of the sections on which such thistles and noxious weeds shall be so cut, at the rate of one dollar per day for the time occupied in so cutting, to be recovered in any court of justice in this state.

Duty of  
superin-  
tendents.

§ 634. (1851, *ch.* 57, § 1.) Superintendents appointed by the canal board on the several canals of this state, shall give their personal and constant attention to the duties of their office.

Receipts.

§ 635. (*Same ch.*, § 2.) No superintendent, appointed as aforesaid, shall under any pretense whatever take a receipt for labor done, services performed or materials furnished for the canals, when the money shall not be actually paid.

To pur-  
chase for  
cash.

§ 636. (1840, *ch.* 310, § 1; *amended* 1855, *ch.* 535, § 3.) All purchases for the use of any department, office, or work of the government, shall be for cash, and not on credit or time. Each voucher, whether for a purchase or for a service, or other charge, shall be filled up at the time it is taken; and in all cases where the payment is not made directly by the treasurer or governor, proof in some apt form shall be furnished on oath, that it was so filled up at the time it was taken, and that the money mentioned therein to have been paid, was in fact paid in cash or by draft on some specified bank. The auditor in all cases when moneys are paid from the canal revenues, loans or fund, and the comptroller in all cases when payments are made from any other revenue or fund, shall from time to time prescribe rules, regulations and forms to secure the faithful observance of this section, and may in all cases, if they shall deem necessary, require proof on oath of the payment of the money as aforesaid.

To appoint  
foreman,  
etc.

§ 637. (1861, *ch.* 57, § 3.) Each superintendent, so appointed, shall have power to appoint his own foreman, lock-

tenders and other subordinate persons necessary to enable him to discharge his official duties, and the compensation to each shall not exceed the rate of compensation established by the board of canal commissioners. But the canal commissioner in charge of any section of the canal in which any foreman, lock-tender, or other subordinate person may be employed, or the board of canal commissioners shall have absolute power to remove any foreman, lock-tender or other subordinate, for misconduct, incompetency or neglect of duty, provided such canal commissioner, or the board of canal commissioners, making such removal, shall specify the cause of such removal in writing and file the same in the office of the auditor of the canal department within ten days from the date of such removal. In case of the removal of any such foreman, lock-tender or other subordinate, it shall be the duty of the commissioner or the board of canal commissioners making such removal immediately to notify the superintendent in charge of the section of the canal, where such removal shall be made of the fact of such removal; and in case the superintendent shall neglect or refuse for three days to fill the vacancy thus created, and to notify the commissioner or board of canal commissioners thereof, it shall be the duty of the canal commissioner, or the board of canal commissioners making such removal to fill such vacancy.

§ 638. (1853, *ch.* 52, § 1.) It shall be the duty of each canal superintendent of this state, on or before the fifteenth day of each month, to publish in some newspaper, printed in any county through which any part of his section of the canal shall pass, an abstract of his official disbursements during the preceding month, stating therein the name and residence of the person to whom he has paid money and the amount paid to each; if for labor, the number of days and the amount per day; if for materials, the kind, quantity and price; which abstract shall be published in the entire edition of such newspaper, and shall be verified by the oath of such superintendent. The expense of such publication shall not exceed the sum of fifteen dollars, to be regulated and fixed by the auditor of the canal department; may be paid by such superintendent out of public moneys in his hands, the expense thereof to be included in and published in his next abstract of official disbursements.<sup>1</sup>

Publication of abstract of expenditures by superintendent.

Expense of publishing.

<sup>1</sup> See canal board proceedings, 1872, page 91.

To file abstract in clerk's office in certain cases.

§ 639. (*Same ch.*, § 2.) Should the canal superintendent be unable to procure the publication as aforesaid for the sum mentioned, then it shall be his duty to make and file such abstract in the county clerk's office in the county in which he shall reside, or in the town clerk's office in the town through which his section of the canal shall pass, as the said auditor shall direct.

Auditor to prescribe form of abstract and blanks.

§ 640. (*Same ch.*, § 3.) The auditor of the canal department shall prescribe the form of such abstract, and cause the necessary blanks to be printed and sent to the superintendent, together with such instructions for publication or filing as will be necessary to insure uniformity in the same.

Certificate of filing to be sent to auditor.

§ 641. (*Same ch.*, § 4.) Immediately after the publication or filing such abstract in the county or town clerk's office, he shall transmit to said auditor a certificate to the effect that the same has been filed or published according to law, in which he shall state the aggregate amount of such abstract, the form of which certificate shall also be prescribed by said auditor.

Subject to inspection.

§ 642. (*Same ch.*, § 5.) Said abstract so filed shall be subject to the inspection of the public at all reasonable office hours.

Eight-hour law.

§ 643. (1870, *ch.* 385, § 1.) On and after the passage of this act, eight hours shall constitute a legal day's work for all classes of mechanics, working men and laborers, excepting those engaged in farm and domestic labor; but overwork for an extra compensation by agreement between employer and employee is hereby permitted.

To whom it applies.

§ 644. (*Same ch.*, § 2.) This act shall apply to all mechanics, working men and laborers now or hereafter employed by the state, or any municipal corporation therein, through its agents or officers, or in the employ of persons contracting with the state or such corporation for performance of public works.

Penalty for violation of.

§ 645. (*Same ch.*, § 3.) Any officer or officers, or agents of this state, or of such corporation, who shall openly violate or otherwise evade the provisions of this act, shall be deemed guilty of malfeasance in office, and be liable to suspension or removal accordingly by the governor or head of the department to which such officer is attached.

§ 646. (*Same ch.*, § 4.) Any party or parties contracting Do. with the state, or any such corporation, who shall fail to comply with, or secretly evade the provisions hereof, by exacting and requiring more hours of labor, for the compensation agreed to be paid per day, than is herein fixed, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not less than one hundred nor exceeding five hundred dollars, and in addition thereto, shall forfeit such contract at the option of the state.<sup>1</sup>

§ 647. (*R. S.*, *Chap. IX*, *Art. II*, § 23; amended 1870, *ch.* 222.) Whenever the navigation of any of the canals shall be interrupted or endangered, it shall be the duty of the commissioners, without delay, to repair the injury causing or threatening such interruption, and for that purpose, they shall have power, by themselves or their agents, to enter upon and use any contiguous lands, and to procure therefrom all such materials as in their judgment may be necessary or proper to be used in making such repairs. And whenever the navigation of any of the canals shall be interrupted or endangered, any commissioner or superintendent may, if in his judgment it is necessary or proper to do so, cut up, destroy or remove any canal boat, vessel or other thing in or partly in the canal, and the damages in consequence thereof shall be assessed in the manner provided by chapter two hundred and eighty-seven of the laws of 1836.

May enter on canals, take materials, and destroy or remove boats, etc. in certain cases.

## OF COLLECTORS.

§ 650. (*R. S.*, § 104.) The collectors of tolls shall keep ac- Duty of collectors. counts of all tolls received by them, in such form as shall be prescribed from time to time by the [auditor,] and shall deposit such original books of account, together with such clearances and other papers as he shall require, in the [canal department,] on or before the tenth day of January in each year.

§ 651. (*R. S.*, § 105.) They shall also make abstracts from such books showing the amount of tolls received by them each day, and transmit the same by mail, to the [auditor] four times in each month, on such days as he shall direct.

Id. Abstracts.

§ 652. (*R. S.*, § 106.) They shall deposit the moneys received by them for tolls, to the credit of the treasurer of this

Deposits in banks.

<sup>1</sup> § 6 of this act repeals the eight-hour law of 1867, *ch.* 856

state, at least once in two weeks, in such banks as may, from time to time, be designated by the canal board.

Duty of  
banks.

§ 653. (*R. S.*, § 107.) The [auditor] shall require the several banks so designated, to transmit to him, by mail, a monthly account of deposits by the collectors of tolls; and if any bank shall neglect to comply with such requisition, or he shall doubt its solvency, he shall direct such deposits to be made in such other bank as he shall designate, until the further order of the canal board.<sup>1</sup>

Refunding  
tolls.

§ 654. (*R. S.*, § 108.) The collectors may be authorized to refund tolls erroneously paid to them, or which equitably ought to be refunded, under such regulations as shall be prescribed by [the auditor].<sup>1</sup>

Proceed-  
ings  
against  
collectors.

§ 655. (*R. S.*, § 109.) If any collector of tolls shall neglect to deposit, according to law and the directions of the [auditor,] the moneys, that, from the abstracts of returns made to the [auditor,] he shall appear to have collected for tolls, the [auditor] may issue a warrant, under his hand and seal, directed to the sheriff of any county where such collector or any of his sureties may be found, thereby commanding such sheriff to cause the amount of tolls in the hands of such collector (or such part thereof as the [auditor] shall direct by the warrant), to be made and levied of the goods and chattels, lands and tenements of such collector; and in case the same shall not be sufficient, then of the goods and chattels, lands and tenements of the sureties of such collector; and to return the money, together with the warrant and his doings thereon to the [auditor] within sixty days from the date thereof.<sup>1</sup>

Id.

§ 656. (*R. S.*, § 110.) The sheriff to whom such warrant shall be directed, shall immediately cause the same to be executed; and may demand and collect the same fees for executing the same, as are allowed by law for the service of executions issuing out of the supreme court.

Office of  
assistant  
collector  
abolished.

29 N. Y. 534.

§ 657. (1859, *ch.* 495, § 3.) The office of assistant collectors or assistants to collectors of canal tolls on the canals is hereby abolished, and the duties pertaining to that office shall hereafter be performed by the collectors of tolls, except as herein provided.

<sup>1</sup> Modified by ch. 162, Laws of 1848.



§ 658. (*Same ch.*, § 4.) The collectors of canal tolls shall not have the power to select or hire a room or building to be occupied as a collector's office, without the consent of the canal commissioners in charge of the division of the canals on which such collector shall be appointed, and where such office may be located; nor shall any money be paid for the rent of any collector's office unless such canal commissioner shall have approved of the amount agreed to be paid for the rent of any such office. Collectors of canal tolls shall not have the power to designate or select any person to measure, count or inspect any timber or lumber carried in rafts or boats on the canals of this state.

Room to be occupied as collectors' office.

§ 659. (*Same ch.*, § 5.) The canal board shall, from year to year, when the annual appointments are made, fix and determine the compensation and salaries to be paid to the collectors of canal tolls and their clerks, to the weigh-masters and their assistants, and to such other officers and agents connected with the collection of tolls on the canals as the said board are or may be authorized to appoint or employ, which shall not be increased during such year. No clerks shall be employed by any collector of tolls, except when the auditor of the canal department shall certify the same to be necessary to enable such collector to perform the duties of his office.

Compensation to be fixed by canal board.

§ 660. (*Same ch.*, § 6.) For the purpose of protecting the state in its property, revenue and tolls on the canals, the canal board is hereby authorized to appoint ten inspectors and measurers of lumber and timber, and of boats and their cargoes, to be located at such points and places on the canals as may be deemed most expedient to accomplish the objects of the appointment.<sup>1</sup>

Inspectors and measurers to be appointed.

§ 661. (*Same ch.*, § 7.) The measurers and inspectors authorized to be appointed under the next preceding section, are hereby authorized to administer oaths, when the same becomes necessary to enable them to discharge the duties of their respective offices.

May administer oath.

§ 662. (1861, *ch.* 124, § 3.) Collectors of canal tolls (*shall*)<sup>2</sup> not give any credit for tolls on boats or cargo; and any col-

Collectors not to give credit.

<sup>1</sup> By Laws 1866, ch. 836, § 4, two more inspectors were authorized in the city of New York. By 1867, ch. 71, § 1, one at Whitehall, and by 1868, ch. 859, one at Oswego. See Art. 4, "Of the canal board," *ante*, §§ 494-497.

<sup>2</sup> The word "shall" omitted from the statutes of 1861, as printed.

lector or his clerk who shall violate the provisions of this section, shall be removed immediately from office.

Collectors  
and weigh-  
master to  
reside at  
place  
where  
office is.

§ 663. (*Same ch.*, § 4.) Every collector of canal tolls and every weigh-master shall reside at the place where the office to which he is appointed, is located, and every such collector or weigh-master shall give his personal attention to the duties of his office. Every weigh-master or weigh-master's clerk, who shall weigh a boat and cargo, shall enter the true weight thereof on the face of the clearance, with the light weight of the boat, as it appears by the light weight register, in such weigh-master's office; and every weigh-master or his assistant or clerk, who shall knowingly make a false entry of the true weight of such boat or cargo, or shall make a false certificate of the light weight of any boat, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both; the fine not to exceed five hundred dollars, and the imprisonment not to exceed two years, in the county jail.

Harbor  
masters'  
fees, New  
York.

§ 664. (1871, *ch.* 205, § 1.) The collector of canal tolls for the city of New York shall not give permits or clearances to canal boats navigating the waters of this state, until the captain or master of said canal boat has paid or satisfied the annual fee of one and one-quarter dollars due the harbor-masters of the port of New York, and now imposed by the laws of this state; which fees may be paid to the said collector of canal tolls for said harbor-masters.

## ARTICLE VII.

### REGULATIONS AND PENALTIES CONCERNING THE NAVIGATION OF THE CANALS AND THE COLLECTION OF TOLLS.

#### REGISTRY OF BOATS.

SECTION 670. Owners of canal boats to give certificate of registry to collectors.

671. If master of boat (whose owners reside out of the state) is changed after certificate is given, new master to give one.

672. Collector to give receipt for certificate, to transmit certificate to auditor.

673. Auditor to make register of boats navigating the canals; name not to be changed without order of auditor.

674. When boat is transferred, upon proof of facts, auditor to alter register.

675. Auditor to send collectors copy of register.

- SECTION 676.** No clearance to be granted without proof of registry.
677. Persons named in certificate deemed owners of boats.
678. Penalty for changing name of boat without consent of auditor, or for reporting false name.
679. Auditor not to change name or hailing-place of boat, etc., upon which there is an existing lien or mortgage filed in canal department, unless, etc.; penalty for changing name without authority of auditor.
680. No boat, without name on it, to have clearance.

## BILLS OF LADING, TOLLS, ETC.

681. Masters of boats to show bill of lading; what to contain.
682. To what collectors to be exhibited.
683. Where no collector at place of lading, delivery or intermediate place, bill of lading to be exhibited to collector at nearest place of delivery. Penalty.
684. Penalty for omitting to show bill of lading when required, and treble tolls on property omitted.
685. Penalty for false bill of lading.
686. Collector may compel master to modify bill by oath.
687. Every boat to have a separate clearance.
688. No boat to proceed beyond place for which it is cleared, until clearance is shown to collector at that place.
689. If no collector at such place, clearance to be delivered to last collector whose office shall be passed.
690. Twenty-five dollars penalty for not delivering clearance.
691. Collectors to give copies of clearances.
692. Copy to have effect of original; fee for making it.
693. Tonnage to be ascertained and charged according to real weight of articles.
694. When master of boat and collector cannot agree as to amount of tolls, articles to be weighed, counted or measured.
695. Master to pay expense of weighing, etc.
696. Collector may detain boat and cargo until tolls and expenses are paid.
697. If payment be refused, collector may distrain and sell property.
698. Surplus arising from sale to be paid to master of boat or owner of property.
699. Statement of passengers to be furnished by masters of certain boats.
700. What first statement delivered to contain; what subsequent statements.
701. Affidavit that no passengers have been conveyed.
702. Each master to make statement.
703. Collector to transmit statement and affidavit to auditor; penalty for not furnishing.
704. Such boat may be refused clearance.
705. Collector receiving statement, etc., to give acknowledgment.
706. Certificate of auditor that no statement, etc., has been received at his office, presumptive evidence that none has been made.

- SECTION 707. Tolls on passengers in boats not belonging to a line, etc.  
how to be paid ; penalties.
708. A specified sum by the year may be received as commutation  
for tolls upon passengers.
709. Commutation, how paid.
710. Clerk, authorized by collector, may perform his duties in his  
absence ; collector responsible for his acts.

BOATS, NAVIGATION, ETC.

711. Collectors, etc., to assign berths to boats when disputes arise  
concerning them.
712. No float to move faster than four miles an hour, except by  
permission of canal commissioners ; ten dollars penalty for  
so doing.
713. Rate of speed on enlarged canals to be fixed by canal board,  
not to exceed six miles an hour.
714. Boats propelled or towed by steam to pass on berme side of  
canal ; penalty.
715. When passage boat overtakes floats, latter to let former pass.
716. When two floats meet, each to take the right.
717. When two floats meet, where less than thirty feet wide, boats  
going from Hudson river to stop till the other passes.
718. Ten dollars penalty for violating either of the three preced-  
ing sections.
719. Floats within one hundred yards of lock, on level with water  
in lock, to pass before float on another level.
720. Questions of precedence in passing locks to be decided by  
lock-keeper.
721. Twenty-five dollars penalty for not conforming to such  
decision, or for violating two preceding sections.
722. Twenty-five dollars penalty for using poles pointed with iron.
723. Deck boats to have knife fixed on bow or stern.
724. Twenty-five dollars penalty for not complying with above.
725. Same penalty for obstructing navigation, by mooring boats, etc.
726. Same penalty for sinking any boat, etc., or obstructing tow-  
path, etc.

ABANDONED OR STOLEN PROPERTY.

727. Boats, etc., found floating in canal, or articles found on tow-  
path, to be seized and sold.
728. If owner pays costs, etc., not to be sold.
729. Avails, how accounted for.
730. If articles sold, proceeds of sale to be paid to owner after  
deducting costs, etc.
731. Forfeiture for taking rails, etc., from banks or vicinity of canal.
732. Penalty for violation of last section.
733. Penalties and forfeitures chargeable on boat or cargo.
734. When such penalty is sued for, process to direct officer to  
detain boats, etc., until suit be decided or security given.
735. If security be given or defendant prevail, to be released ; if  
judgment recovered to be sold, unless amount of, etc., be  
paid.

## FRAUDS ON REVENUES.

- SECTION 736.** Weigh-masters and inspectors may administer oaths.  
 737. Boat to be forfeited for false clearances.  
 738. Goods to be forfeited if falsely marked as to contents.  
 739. Property forfeited to be sold; one-third proceeds to go to informer.  
 740. Officers having information of fraud upon revenues, and not discovering same, deemed guilty of a misdemeanor.  
 741. Penalties not to be remitted, unless illegally imposed; how applied for.

## REGISTRY OF LIENS.

742. Chattel mortgages on canal craft may be filed with auditor.  
 743. Auditor to file and enter in a book kept for that purpose; to be subject to inspection.  
 744. Priority of liens.  
 745. Auditor's fees, for filing and entering fees, to be paid before filing.  
 746. Certified copies may be used as evidence.  
 747. Mortgages on canal craft to be filed in canal department.  
 748. Mortgages not filed, to be void as against subsequent purchasers or mortgagees in good faith.  
 749. Mortgages to be filed annually, or to be void as to creditors, etc.  
 750. Auditor to number, and enter mortgages, book, to be subject to inspection.  
 751. Priority of claims or liens.  
 752. Certified copies may be used as evidence; their effect.  
 753. Auditor to designate a clerk as register; fees to be paid in advance.  
 754. Auditor not to permit name or hailing of boat or other craft to be changed, upon which there is a mortgage filed, unless, etc.; penalty for changing without permission.

OF REGULATIONS AND PENALTIES AS TO NAVIGATION AND TOLLS —  
REGISTRY OF BOATS.

§ 670. (*R. S.*, § 111.) The owners of every boat navigating the canals, shall subscribe and deliver to the collector of whom the first clearance for such boat shall be demanded, a certificate, to be entitled "a certificate of registry," containing the names of such owners, and their respective places of abode, and also the name of the boat, and of some place as that where it is owned; if the owners shall reside out of this state, the certificate of registry shall be signed and delivered by the master of the boat, as the owner thereof.

Certificate  
of registry

§ 671. (*R. S.*, § 112.) If the master of a boat of which the owners reside out of the state, shall be changed after he

th.

shall have delivered such certificate, the new master shall sign and deliver a proper certificate of registry, to the collector of whom he shall first require a clearance.

**Duty of collector.**

§ 672. (*R. S.*, § 113.)<sup>1</sup> Every collector receiving a certificate of registry, shall sign an acknowledgment of the receipt thereof, and deliver the same to the master of the boat; and shall, without delay, transmit the certificate received to the [auditor].

**Duty of auditor.**

§ 673. (*R. S.*, § 114.)<sup>1</sup> The [auditor] shall make a register of all boats navigating the canals, which shall be kept with the books and papers in his office relative to the canals, and be open to inspection during office hours. The name of no registered boat shall be changed, without the order of the [auditor].

**Register, how changed.**

§ 674. (*R. S.*, § 115.)<sup>1</sup> If any persons residing within the state, claiming to be owners of a registered boat, by a transfer from its former owners, shall produce to the [auditor] due proof of such transfer, and shall deliver him a new certificate of registry signed by themselves, it shall be the duty of the [auditor] to change the register of such boat, so as to correspond with such new certificate.

**Copies to collectors.**

§ 675. (*R. S.*, § 116.)<sup>1</sup> The [auditor] shall, from time to time, transmit to the several collectors, a certified copy of the register of boats in his office, and of the several changes made therein.

**Clearances, when granted.**

§ 676. (*R. S.*, § 117.) No clearance shall be granted to any boat, unless the collector of whom it is required, shall have evidence that such boat is duly registered; or if it be not registered, until the master thereof shall have delivered to such collector, a proper certificate of registry, or have exhibited to him, the receipt of some other collector, for such certificate.

**Who owners.**

§ 677. (*R. S.*, § 118.) The persons specified in its certificate of registry, as the owners of a boat, shall be deemed in law the true owners thereof, for all purposes of enforcing the collection of tolls, and the execution of the rules and regulations for the navigation or maintenance of the canals.

**Penalties.**

§ 678. (*R. S.*, § 119.)<sup>1</sup> Every owner of a boat who shall change its name from that stated in its certificate of registry,

<sup>1</sup> Modified by ch. 162 of 1848.

then in force, without the order of the [auditor], and every master who shall enter or report such boat, at any collector's office, by a different name than that so stated, shall, for every such offense, forfeit the sum of twenty-five dollars.<sup>1</sup>

§ 679. (1864, *ch.* 412, § 8.) The auditor aforesaid shall not grant permission to change the name or hailing place of any canal boat, steam tug, scow, or other craft navigating the canals of this state, upon which there is an existing lien or mortgage filed in the canal department, unless it shall be necessary to make the name or hailing place conform to the United States custom house regulations, by reason of a change of name on the canal, after having been registered at the custom house;<sup>2</sup> and any boat, steam tug, scow, or other craft found navigating the canals of this state, the registered name or hailing place of which shall have been changed without the written permission of the auditor of the canal department, shall, upon due proof thereof, pay a fine not less than fifty nor more than three hundred dollars.

§ 680. (*R. S.*, § 120.) No boat shall receive a clearance, or be permitted to pass on any canal, which shall not have the name thereof, and of the place where it is owned, corresponding with its certificate of registry then in force, painted in some conspicuous and permanent part of the outside of the boat, in letters of at least four inches in height. Name to be on each boat.

## BILLS OF LADING, TOLLS, ETC.

§ 681. (*R. S.*, § 121; *amended* 1859, *ch.* 16.) Every master of a boat, conveying property on a canal, shall exhibit to the several collectors, hereafter mentioned, a just and true account, or bill of lading, of such property, signed by himself and by the consignor thereof, containing: Bill of lading, its contents.

1. The name of each place on the canal where any portion of such property was shipped, and of the place for which it is intended to be cleared.

2. A statement of the names, description and weight of all

<sup>1</sup> See Resolution of canal board No. 36, *post*, reducing penalties, adopted March 14, 1838, which reduces this penalty to ten dollars.

<sup>2</sup> See resolutions of canal board (Proceedings 1866, February 9th and 1871, p. 179), as to claim of United States treasury department, that canal boats entering navigable rivers are subject to coasting laws and licenses.

the articles of such property on which toll is charged by the ton, of the number of articles on which toll is charged by the number, and of the feet of each article on which toll is charged by the foot.

3. A specification of the weight or quantity of each article, where a different rate of toll is charged on different articles, on which toll is so computed.

4. No clearance of a boat and cargo shall be granted or issued by any collector of canal tolls, except upon the production to him of a bill of lading containing the above particulars.

To whom  
to be ex-  
hibited.

§ 682. (*R. S.*, § 122.) Every such account or bill of lading shall be exhibited.

1. To every collector of whom a clearance shall be required.

2. To every collector whose office shall be the next in order, in the course of the voyage, to the place where a clearance shall have been given.

3. To every collector at a place where any portion of the cargo shall be unladen, or any additional cargo be received; or if there be no collector at such place, to the collector whose office shall be next in order in the course of the voyage.

4. To every other collector who shall demand such account, or bill of lading, to be exhibited:

Penalties.

§ 683. (*R. S.*, § 123.) If there shall be no collector's office at the place where any articles shall be laden, nor at the place of their delivery, nor at any intermediate place, the master of the boat shall, within ten days after the delivery of such articles, exhibit the bill of lading thereof to the collector whose office shall be nearest to the place of such delivery, and shall pay to such collector the tolls due on such articles; and every master who shall omit to exhibit such bill, and to pay such tolls within the period so limited, shall, for every offense, forfeit the sum of twenty-five dollars.

1b.

§ 684. (*R. S.*, § 124.) Every master of a boat navigating a canal, who shall omit to deliver a true bill of lading to any collector when required, or shall deliver any articles mentioned in a bill of lading, at a place beyond that to which they shall be cleared, shall forfeit the sum of twenty-five dollars. Every person who shall sign or deliver to any collector, a false bill of lading, shall pay, on all property omitted in such false bills the toll usually charged on such property, to any collec-

245 of old  
Manual.



tor who shall be satisfied of such omission, for the whole distance such property is conveyed on a canal.<sup>1</sup>

§ 685. (*R. S.*, § 125.) Every person who shall knowingly sign or deliver a false bill of lading, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both; the fine not to be less than three times the value of any property omitted in such bill, and the imprisonment not to exceed two years.

§ 686. (*R. S.*, § 126.) Every collector receiving a bill of lading, may require the master exhibiting it, to verify it by his oath, which such collector is authorized to administer. Bills, how verified.

§ 687. (*R. S.*, § 127.) Each boat navigating the canals shall have a separate clearance, and no part of the cargo of any boat shall be cleared to a place, beyond that, to which the boat is cleared. Separate clearances

§ 688. (*R. S.*, § 128.) No boat shall proceed beyond the place to which it shall be cleared, nor unlade any article of its cargo before, or after, its arrival at the place for which such articles are cleared, nor proceed beyond such place, until the master thereof shall have delivered the clearance of such boat or articles, to the collector at the place for which they are cleared. Regulation of boats.

§ 689. (*R. S.*, § 129.) If there be no collector at such place, ib. the master shall deliver the clearance of the boat or articles, to the last collector whose office shall be passed by the boat in the order of its voyage, and shall receive a permit from such collector, to proceed to the place to which they are cleared.

§ 690. (*R. S.*, § 130.) Every master who shall omit to deliver a clearance, to the collector to whom the same ought to be delivered, shall forfeit the sum of twenty-five dollars.<sup>2</sup> Penalty.

§ 691. (*R. S.*, § 131.) Every collector issuing any clearance, or in whose office any clearance is on file, shall, whenever requested, give a certified copy thereof, with the additional cargo entered thereon, and the several indorsements of other collectors. Collector to give copies.

<sup>1</sup> See resolution of canal board (Proceedings 1868, page 60) relative to the enforcement of this section (§ 245, of Manual of 1863). The penalty of \$25 in this section is reduced to \$10 by resolution No. 36 canal board.

<sup>2</sup> This penalty reduced to ten dollars, by canal board resolution No. 36.

Effect of  
copy; fees  
for mak-  
ing.

§ 692. (*R. S.*, § 132.)<sup>1</sup> Such certified copy shall have the same validity and effect, as the original clearance, of which it is a copy; and every collector shall demand and receive for such certified copy, not exceeding two folios, from the person requesting the same, six cents, and twelve and a half cents for all copies exceeding two folios, and shall account to the [auditor] for all sums which shall be so received, at such time, and in such manner, as the [auditor] shall direct.

Tonnage.

§ 693. (*R. S.*, § 133.) The tonnage of articles conveyed on either of the canals, on which toll may be charged by the ton, shall be ascertained and charged, according to the real weight of such articles.

Articles,  
when to be  
weighed.

§ 694. (*R. S.*, § 134.) Whenever a difference as to the amount of tolls to be paid, shall arise between a collector of tolls and the master of a boat, the collector shall detain the articles on which the tolls are charged, and the boat containing them, and shall weigh, count, or measure, the articles, as the case may require; and if it shall be found, that their weight, number, or feet, exceed the amount contained in the bill of lading thereof, the collector shall charge tolls, according to the weight, number, or feet thus found.

Expense,  
how paid.  
Ib.

§ 695. (*R. S.*, § 135.) In every such case, the master shall pay to the collector, the expense of such weighing, counting or measuring, at the rate of twenty-five cents for every ton weighed; of five mills a piece, of articles paying toll by the number; and of five cents for each hundred feet, of articles paying toll by the foot; and such expenses shall be chargeable on such articles, and on the boat containing them.

Payments,  
how en-  
forced.

§ 696. (*R. S.*, § 136.) The master of every boat shall be liable for the payment of tolls and expenses; and it shall be the duty of every collector of tolls to detain all articles on which tolls or expenses are chargeable, and each boat containing them, until such tolls or expenses shall be paid.

Ib.

§ 697. (*R. S.*, § 137.) If such payment be refused, the collector shall distrain so much of the property detained as shall be sufficient to satisfy the charges thereon; and at the expiration of eight days, if such charges shall remain unpaid, he

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<sup>1</sup> Modified by. ch 162, 1848.

shall expose to sale the property distrained, at his usual place of receiving tolls, and shall sell the same at public auction, to the highest bidder.

§ 698. (*R. S.*, § 138.) Any surplus arising from the sale, Surplus. after the payment of the charges and of the costs of distress and sale, shall be paid on demand, to the master of the boat, or the owner of the property distrained.

## PASSENGER TOLLS.

§ 699. (*R. S.*, § 139.) Every master of a boat which usually State-  
ments of  
passengers  
in certain  
cases. runs on the canal night and day, or which belongs to any regular line of packet or freight boats, shall, during each navigable season on the canal, as often at least as once in thirty days, and oftener, if required by the canal board, and under such regulations as that board shall establish, deliver to some collector of tolls a statement of passengers, and shall verify the same under oath, to be administered to him by such collector; and at the same time shall pay to such collector, the lawful tolls on the passengers mentioned in the statement.

§ 700. (*R. S.*, § 140.) The first statement so delivered, Contents  
of first  
statement. shall contain the names of all the passengers conveyed in such boat, from the commencement of its running in that season, until the delivery of the statement, and the distance to which each passenger was carried; and each subsequent statement shall contain the names of all the passengers, and the distance to which each was carried in such boat, since the time embraced in the last previous statement.

§ 701. (*R. S.*, § 141.) If it shall happen, that during the time for which a statement is required, no passenger shall have When affi-  
davit to be  
made. been conveyed in such boat, the master thereof shall present to some collector an affidavit to be sworn to before such collector, that no passenger has been conveyed in such boat, during the time specified therein.

§ 702. (*R. S.*, § 142.) If it shall happen that different persons have been masters, or had charge of any boat, for the time during which the statement or affidavit above mentioned is required, each person shall furnish such statement or affidavit for such portion of the time as such boat was under his control or management. Different  
masters.

§ 703. (*R. S.*, § 143.) The several collectors shall transmit Collectors  
duty; Pen-  
alty on to the [auditor] the several affidavits and statements relative

masters, etc. — to passengers, received by them; and every master who shall neglect to furnish the affidavit or statement, or to pay the toll on any passengers, by law required, and every owner of such boat, when such neglect occurred, shall for each offense forfeit the sum of twenty-five dollars.<sup>1-2</sup>

Further penalty. § 704. (*R. S.*, § 144.) The commissioners of the canal fund may, in their discretion, prohibit such boat from receiving a clearance and navigating the canals, until such statement or affidavit be furnished, and the tolls paid.

Collectors to acquire knowledge statement, etc. § 705. (*R. S.*, § 145.) Every collector receiving such a statement, or affidavit, relative to passengers, shall give to the person from whom he received the same, a written acknowledgment thereof.

Evidence of neglect to make statement, etc. § 706. (*R. S.*, § 146.) A certificate made by the [auditor] under the seal of his office, after thirty days from the time when such a statement or affidavit ought to be made, that no statement or affidavit in respect to any particular boat, for the time particularly stated therein, has been received at his office, shall be presumptive evidence that no such statement or affidavit has been made by the master of such boat for the time specified in the certificate.<sup>1</sup>

Tolls on passengers in certain boats. § 707. (*R. S.*, § 147.) Every master or person having charge of any boat navigating a canal, which does not usually run in the night time, or which does not belong to any regular line of packet or freight boats, shall pay the lawful tolls on all passengers conveyed in such boat, in the same manner as he is required to pay toll on property conveyed; and every such master who shall omit to give a just and true account of such passengers, to the collector, at the place where such passengers shall be received in such boat, or at the office next in order in the course of the voyage, after receiving the same, or who shall refuse to verify the same under oath, when required by any collector, or to pay the toll on such passengers, shall for every offense forfeit the sum of twenty-five dollars.<sup>3</sup>

Commutation for tolls. § 708. (*R. S.*, § 148; *modified* 1835, *ch.* 21.) The [canal board] may, in [its] discretion, receive from the owners of any

<sup>1</sup> Modified, 1848, *ch.* 162.

<sup>2</sup> Penalty reduced to fifteen dollars. Resolution, No. 36.

<sup>3</sup> Penalty reduced to ten dollars. Resolution, No. 36.

boat a specified sum by the year, for a license to carry passengers therein, as a commutation for tolls upon passengers.

§ 709. (*R. S.*, § 149; *modified* 1835, *ch.* 21.] Such com- How paid.  
mutation shall be paid at such time and in such manner as the  
[canal board] may prescribe, and no statement or affidavit  
relative to conveying passengers shall be required from the  
master of any boat so licensed.

§ 710. (*R. S.*, § 150.) Any clerk duly authorized by a Clerks of  
collectors.  
collector may perform all the duties, and exercise all the  
powers legally appertaining to such collector, in his absence,  
and the collector shall be responsible for the acts of such clerk.

## BOATS, NAVIGATION, ETC.

§ 711. (*R. S.*, § 151.) It shall be the duty of every collector Berths of  
boats.  
of tolls, and if there be no collector present, of every super-  
intendent, to assign berths to all boats when loading or unload-  
ing at any landing place on a canal, whenever disputes shall  
arise concerning the same.

§ 712. (*R. S.*, § 152.) No float shall move on any canal Speed of  
boats, etc.  
faster than at the rate of four miles an hour, without a per-  
mission in writing, signed by a majority of the canal commis-  
sioners; and for each violation of this provision the master  
shall forfeit the sum of ten dollars.

§ 713. (1861, *ch.* 124, § 1.) Any boat may move on any of Speed on  
enlarged  
canals.  
the enlarged canals of this state, at any rate of speed that may  
be fixed by the canal board, not exceeding six miles an hour.

§ 714. (*Same ch.*, § 2.) When any boat propelled or towed Steam-  
boats and  
tows to  
pass on  
berme  
side.  
by steam, in passing on either of the canals of this state,  
shall meet or overtake any other boat or float not so propelled  
or towed, except where such boat or float is waiting its turn  
for lockage, it shall be the duty of the master of each, to turn  
out so as to allow the boat propelled or towed by steam to  
pass on the berme side of the canal. Every master or boat-  
man who shall violate any provision of this section shall, for  
each offense, forfeit the sum of ten dollars.<sup>1</sup>

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<sup>1</sup> See canal regulation No. 49, *post*, as amended April 29, 1869, and report of auditor, with amendments. Canal board proceedings, 1871, pp. 42, 45.

Preference  
in passing.

§ 715. (*R. S.*, § 153.) Where a boat used chiefly for the conveyance of persons, shall overtake any other float, not used chiefly for that purpose, it shall be the duty of the master of the latter to give to the former, every practicable facility for passing, and whenever it shall become necessary, to stop until such passage boat shall have fully passed.

Boats  
meeting.

§ 716. (*R. S.*, § 154.) Where any float, in passing on either of the canals, shall meet with any other float, it shall be the duty of the master of each, to turn out to the right hand, so as to be wholly, on the right side of the center of the canal.

Ib.

§ 717. (*R. S.*, § 155.) Where any floats shall approach any place on either of the canals, which is less than thirty feet wide on the surface, or which will not safely permit their passing, it shall be the duty of the master of the float going from the navigable waters of the Hudson river, to stop at such distance from such narrow place, as may be convenient for the float going toward such navigable waters to pass through such narrow place, and there to wait until such passage is effected.

Penalties.

§ 718. (*R. S.*, § 156.) Every master or boatman violating any provision of the three sections immediately preceding, shall, for each offense, forfeit the sum of ten dollars.

Passing  
locks.

§ 719. (*R. S.*, § 157.) Every float, within one hundred yards of a lock, if on the same level that the water in the lock then is, shall be permitted to pass the lock, before any other float not on the same level.

Ib.

§ 720. (*R. S.*, § 158.) If, on the arrival of two or more floats at any lock, a question shall arise between their respective masters as to which shall be first entitled to pass, such question shall be determined by the lock-keeper, and each float shall be passed in the order and manner in which he shall direct.

Penalties.

§ 721. (*R. S.*, § 159.) Every master, owner or navigator of any float refusing to conform to such determination of the lock-keeper, or detaining or unnecessarily hindering the passage of any float, through a lock, in violation of any provision of the two last sections, shall, for each offense, forfeit the sum of twenty-five dollars.<sup>1</sup>

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<sup>1</sup> Penalty reduced to ten dollars, C. B. Res. No. 36.

§ 722. (*R. S.*, § 160.) No person navigating either of the canals, shall be permitted to use therein any setting pole or shaft, pointed with iron or other metal; and if any person shall offend against this section, he shall, for every such offense, forfeit the sum of twenty-five dollars.<sup>1</sup>

Setting poles.

§ 723. (*R. S.*, § 161.) No covered or decked boat, shall navigate any canal without a knife or sharp metallic instrument, so affixed upon the stem or bow of the boat, as to cut apart any tow rope, which otherwise might pass over such bow.

Knife on bow.

§ 724. (*R. S.*, § 162.) Every owner or master of such boat, who shall neglect or refuse to comply with the above provision, shall, for each offense, forfeit the sum of twenty-five dollars.<sup>2</sup>

Penalty.

§ 725. (*R. S.*, § 163.) Every person who shall obstruct the navigation of any canal, by the improper mooring, management or conduct, of any boat or floating thing, shall, for every such offense, forfeit the sum of twenty-five dollars.<sup>3</sup>

Obstructing navigation.

§ 726. (*R. S.*, § 164.) If any person shall obstruct the navigation of any canal, by sinking any vessel, timber, stone, earth or other thing, to the bottom thereof, or by placing any obstruction on the towing path thereof, or on the bank opposite the towing path, he shall forfeit the sum of twenty-five dollars.

Obstructing etc.

ABANDONED, OR STOLEN PROPERTY.

§ 727. (*R. S.*, § 165.) It shall be the duty of every canal commissioner, collector, superintendent or agent, employed on the canals, to seize all boats, rafts, logs, or any floating or sunken thing, which may be found in a canal; or any article not under the care or charge of any person, so found on the tow-path thereof; and to sell the same at public vendue, after giving ten days' written notice of such sale, at two public places nearest to the place where such boat, logs, floating or sunken thing, may be found.

Boat, etc., to be seized.

§ 728. (*R. S.*, § 166.) If the owner of any article so seized, shall appear and claim the same, before the time of sale, and

Owner may stop sale.

<sup>1</sup> Penalty reduced to five dollars, Res. No. 36.

<sup>2</sup> Penalty reduced to ten dollars, Res. No. 36.

<sup>3</sup> Penalty reduced to ten dollars, Res. No. 36.

pay the cost of seizure and expense of removal, no such sale shall take place.

Avails,  
how ac-  
counted  
for.

§ 729. (*R. S.*, § 167.)<sup>1</sup> The avails of such sale shall be accounted for, by the officer making the same, if he be not a collector, to the nearest collector, who shall make returns thereof to the [auditor]. If the sale be made by a collector, he shall account for the avails thereof, to the [auditor].

When paid  
to owners.

§ 730. (*R. S.*, § 168.)<sup>1</sup> After such sale shall have been made, and the proceeds thereof paid [into the state treasury, the said auditor] may, on the application of the owners, and due proof of ownership, pay over such proceeds, after deducting the forfeiture, and all costs and reasonable charges thereon.

Taking  
rails, etc.;  
penalty.

§ 731. (*R. S.*, § 169; *amended* 1830, *ch.* 117.) If any boatman, or person on board of any boat on any canal, shall take, without right, any rails, boards, planks or staves, [firewood or fencing posts], from the banks or vicinity of the canal, the master of the boat shall forfeit, to the owner, treble the value of the property taken, and the possession of such property on board the boat, shall be presumptive evidence of such taking.<sup>2</sup>

1b.

§ 732. (*R. S.*, § 170.) Any person or boatman who shall violate the provisions of the last section, shall forfeit twenty-five dollars to any person who will prosecute therefor.

Boat liable  
for penal-  
ties.

§ 733. (*R. S.*, § 171.) Every penalty and forfeiture, prescribed by this article, and which is declared to be recoverable against the owner, master, boatman, navigator, or other person, having charge of any boat or other float, when incurred, shall be chargeable on such boat or float, and a suit for the recovery thereof, may be brought against any person, being in the possession, or having the charge, of such boat or other float, at the time such suit is commenced.

Boat may  
be de-  
tained.

§ 734. (*R. S.*, § 172.) When any suit shall be prosecuted for any such penalty or forfeiture, the magistrate issuing the process, by a clause to be inserted therein, may direct the officer executing the same, to detain such boat or float, and the furniture and horses belonging thereto, until the suit shall be

<sup>1</sup> As modified by ch. 162, 1848.

<sup>2</sup> The four following sections (*R. S.*, §§ 170, 171, 172 and 173) are also amended by ch. 117 of 1830, to carry into effect the provisions of (*R. S.*) § 169 as amended by that act, to include "*firewood and fencing posts.*"



determined, or until adequate security shall be given for the payment of any judgment that may be recovered.

§ 735. (*R. S.*, § 173.) If such security shall be given, or the defendant in such suit shall prevail, the magistrate shall order the boat or other float and property detained, to be released; but if no such security shall be given, and a judgment shall be recovered for such penalty or forfeiture, and the same, together with the costs shall not be immediately paid, an execution shall be issued, under which the property so detained, may be sold, in like manner, as if the judgment had been obtained against the owner thereof.

When released; when sold.

## FRAUDS ON REVENUES.

§ 736. (1847, *ch.* 278, § 15.) Weigh-masters on the state canals and inspectors of canal boats are hereby authorized to administer oaths when it becomes necessary in the discharge of their duties.<sup>1</sup>

Oaths.

§ 737. (1855, *ch.* 534, § 1.) Whenever any articles shall be transported upon any of the canals of this state, and shall, with knowledge on the part of the captain or owner of the boat, be cleared as articles paying a lower rate of toll, or be partially or altogether omitted from the clearance, the boat upon which such articles shall be transported shall be forfeited to the people of this state, and shall be seized and taken possession of by any collector of canal tolls, or officer acting under his direction, in behalf of and as the property of the people of this state.

Boat to be forfeited for false clearances.

§ 738. (*Same ch.*, § 2.) Whenever any goods, articles, or other property shall be transported upon any of the canals of this state, packed up, or inclosed in boxes, casks, kegs, barrels or bags, which are falsely marked as containing articles of a different description, and of a character chargeable with a less rate of toll, and shall be thus cleared, such articles shall be forfeited to the people of this state, and be seized and taken possession of by any collector of canal tolls, or officer acting

Goods to be forfeited if falsely marked.

<sup>1</sup> Laws of 1857, ch. 105, § 18, was as follows: "The office of canal boat inspector is hereby abolished, and the duties pertaining to that office shall hereafter be performed by the collector of tolls." But in 1859, by ch. 495, § 6, the canal board were authorized to appoint "ten inspectors and measurers of lumber and timber, and of boats and cargoes." Ch. 836, of 1866 ch. 71, 1867, and ch. 859, 1868, provide for the appointment of two more in New York, one at Whitehall, and one at Oswego. See *ante*, §§ 494-497.

under his direction, in behalf of and as the property of the people of this state; but no such confiscation shall be made unless it is proved that the owner of said property knew of the fraud.

Property forfeited to be advertised for sale and sold.

One-third of proceeds go to person giving information.

§ 739. (*Same ch.*, § 3.) The property thus forfeited and seized shall, as soon as may be after such seizure, be advertised for sale by the collector, and sold at public auction to the highest bidder, and the proceeds thereof, accounted for and paid into the treasury. And it shall be the duty of the auditor in case of seizures legally made under the provisions of this act, to pay one-third of the net proceeds of such sale, after deducting expenses, to the person discovering or giving information of such fraud, and another third part thereof to the collector or other officer making the seizure and imposing the penalty.

Duty of officers in cases of fraud upon the revenues, penalties, etc.

§ 740. (*Same ch.*, § 4.) Any officer or employee of the state, upon or connected with any of the canals of this state who shall be cognizant or have information of the commission of, or attempt to commit by any person, any fraud upon the revenues of the canals, and shall not discover the same and enforce the penalties if within his power, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment or both. The fine in cases of the concealment of frauds of the character specified in the first section of this act, not to exceed three times the value of the property fraudulently cleared or omitted from the clearance, and the imprisonment not to exceed two years.

No power to remit penalties.

§ 741. (*Same ch.*, § 5.) The canal board or the commissioners of the canal fund shall not have power to remit penalties imposed for any commission or attempt to commit a fraud upon the revenues, unless they are satisfied that such penalty was illegally imposed, and such remission be applied for in writing and under oath, within sixty days after the imposition of such penalty.

#### REGISTRY OF LIENS.

Chattel mortgages on canal craft may be filed with auditor.

§ 742. (1858, *ch.* 247, § 1.) Any person having a lien or incumbrance on any canal boat, steam tug, scow, or other craft navigating the canals of this state, by a chattel mortgage duly filed, may make a statement in writing setting forth the nature

of his claim, the time when the same arose, the manner in which it originated, and the amount of such lien or incumbrance; and may annex thereto an affidavit made by himself or his agent or attorney, that the said statement is correct, and the claim just and true, and file the same in the office of the auditor.<sup>1</sup>

§ 743. (*Same ch.*, § 2.) It shall be the duty of the said auditor, on the receipt of the said statement, to file the same in his office, and to enter the substance in a book to be provided for that purpose, and the amount, if any, claimed to be due, which book shall always during office hours, be open for the inspection of all persons desiring to examine the same.<sup>1</sup>

To be filed and entered.

§ 744. (*Same ch.*, § 3.) All claims and liens by chattel mortgage, a statement of which shall be filed as herein provided, shall from the time of such filing have preference and priority over all other claims and liens, in the same manner and to the like extent of claims and liens arising on chattel mortgages filed and entered in towns where the mortgagor resides, but shall not have any priority over existing liens and claims.<sup>1</sup>

Priority of liens.

§ 745. (*Same ch.*, § 4.) The auditor shall charge for filing the said statement and making the entry thereof as herein provided, the sum of fifty cents, and he shall not be obliged to file or enter the same until such sum is paid.

Fees.

§ 746. (*Same ch.*, § 5.) Any statement made and filed as herein provided, and copies thereof duly certified by the auditor in the manner required by law, may be read and used as evidence in all courts of justice.<sup>1</sup>

Certified copies on evidence.

§ 747. (1864, *ch.* 412, § 1.) Hereafter any person having any lien or incumbrance on any canal boat, steam tug, scow or other craft navigating the canals of this state, by a chattel mortgage, shall file the same or a true copy thereof, in the office of the auditor of the canal department.

Mortgages to be filed in canal department.

<sup>1</sup> This chapter seems to be superseded by the provisions of ch. 412, laws of 1864, printed next hereafter, which is entitled "An act to amend an act entitled 'An act to provide for the registry of liens and incumbrances upon boats navigating the canal in this state,'" passed April 15, 1858. The act of 1864, contains no formal amendment or repeal of any portion of the law of 1858.

Mortgages  
not filed to  
be void; as  
against,  
etc., etc.

§ 748. (*Same ch.*, § 2.) Hereafter every mortgage or conveyance intended to operate as a mortgage of any canal boat, steam tug, scow or other craft navigating the canals of this state, together with the appurtenances belonging thereto and used in navigating such craft, hereafter made, which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the property mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the previous section of this act.

To be filed  
annually.

§ 749. (*Same ch.*, § 3.) Every mortgage filed in pursuance of this act, shall cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed as directed in the first section of this act.

Auditor to  
number  
and enter  
mortgages.

§ 750. (*Same ch.*, § 4.) It shall be the duty of the said auditor on the receipt of the mortgage, or copy thereof, to cause every such instrument to be respectively numbered, the time of receiving the same to be indorsed thereon, and the substance thereof to be entered in a book provided for that purpose. Entering alphabetically under the names of all the parties to such instrument, with the number indorsed thereon opposite to each name; which entry shall be repeated in the index alphabetically under the name of every party thereto, also indexing the name of each boat mortgaged, with the number of the mortgage opposite to each; which book of mortgages and index shall always, during office hours, be open for the inspection of all persons desiring to examine the same.

Priority of  
liens.

§ 751. (*Same ch.*, § 5.) All claims and liens by chattel mortgage, which shall be filed as herein provided, shall, from the time of such filing, have preference and priority over all other claims and liens, but shall not have any priority over existing claims and liens.

§ 752. (*Same ch.*, § 6.) A copy of any such original instrument, or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of this act, certified by the auditor or his deputy, may be read and used as evidence in all courts of justice, but only of the fact that such instrument or copy and statement was received and filed according to the indorsement of the register thereon, and of no other fact; and in all cases the original indorsement by the clerk, or register made in pursuance of this act, upon such instrument and copy, shall be received in evidence of the facts stated in such indorsement.

Certified  
copies may  
be used  
in evi-  
dence.

§ 753. (*Same ch.*, § 7.) The auditor aforesaid shall designate a clerk, who shall act as register, and the auditor shall be entitled to receive the following fees for services under this act for the use of the state; for filing each instrument or copy, and entering the same in a book as aforesaid, twenty-five cents; for searching for each paper, twenty cents; and the like fees for certified copies of such instruments or copies, as are allowed under existing laws to be charged by the auditor for copies and certificates of record kept in the canal department; and the said auditor shall not be obliged to file or enter, or cause to be filed or entered, any mortgage or copy thereof, until the fee provided under this section is paid.

Fees.

§ 754. (*Same ch.*, § 8.) The auditor aforesaid shall not grant permission to change the name or hailing place of any canal boat, steam tug, scow, or other craft navigating the canals of this state, upon which there is an existing lien or mortgage filed in the canal department, unless it shall be necessary to make the name or hailing place conform to the United States custom-house regulations, by reason of a change of name on the canal, after having been registered at the custom house; and any boat, steam tug, scow, or other craft found navigating the canals of this state, the registered name or hailing place of which shall have been changed without the written permission of the auditor of the canal department, shall, upon due proof thereof, pay a fine not less than fifty nor more than three hundred dollars.

Change o  
names of  
boats.

## ARTICLE VIII.

REGULATIONS AND PENALTIES CONCERNING THE PROTECTION AND  
MAINTENANCE OF THE CANALS.

## OF BRIDGES.

- SECTION 760. Where new roads cross canal, bridge to be erected and kept in repair at expense of town in which it is situated.
761. Sanction of canal commissioner to model and location must be obtained.
762. Penalty of fifty dollars for proceeding to build bridge without such consent.
763. Canal commissioner to construct road and street bridges over the enlarged canals where they have been maintained heretofore.
764. Farm bridges, where to be constructed. Proviso.
765. Benefits to be set off against damages in certain cases.
766. Commutation for farm bridges. Damages for not rebuilding.
767. Benefits to be set off against damages.
768. Appraisal, how made.
769. Provisions of § 4, ch. 207, of 1839, applicable to the several canals.
770. Private roads to bridges to be opened in certain cases.
771. Certificate of title to be furnished before payment of damages.
772. Who not entitled to farm bridges.
773. Laws of 1839 shall apply to the bridges on the enlarged Erie, enlarged Oswego, and enlarged Cayuga and Seneca canals and Cayuga inlet.
774. Road and street bridges, where to be constructed.
775. All laws inconsistent with the act of 1854 repealed.
776. No riding or driving over state bridges faster than a walk.
777. No more than twenty-five cattle to be on any such bridge at one time, not to be driven faster than a walk.
778. Penalty for violation of two preceding sections; how recovered and accounted for.
779. Commissioners to maintain two bridges over Black river, under restrictions.
780. Fort Miller bridge free to canal employees and navigators.
781. Tow-path bridge at Cohoes.
782. State to control said bridge. Cohoes to pay its proportion of repairs.
783. Canal across Water street, West Troy, and bridge.

## OF WHARVES, BASINS, ETC.

784. No wharf, basin, etc., to be constructed without consent of canal commissioners.
785. Penalty of twenty-five dollars for constructing wharf, etc., without such permission.

## OF INJURIES TO STRUCTURES.

786. Penalty for wantonly opening any lock gate, etc., destroying any bridge, etc.
787. Penalty for injuries to locks and structures.
788. Penalty of five dollars for driving or riding any horse, etc., on tow-path or berme bank, except in towing boats, etc.
789. Two hundred and fifty dollars penalty for drawing water at Lockport.

## REGULATIONS AND PENALTIES AS TO STRUCTURES, AND THE PROTECTION AND MAINTENANCE OF THE CANALS.

## OF BRIDGES.

§ 760. (*R. S.*, § 174.) In all cases where a new road or public highway, shall be laid out by legal authority, in such direction as to cross the line of any canal, and in such manner as to require the erection of a new bridge over the canal, for the accommodation of the road, such bridge shall be so constructed, and forever maintained, at the expense of the town in which it shall be situate. Town bridges.

§ 761. (*R. S.*, § 175.) No bridge shall be constructed across any canal, without first obtaining for the model and location thereof, the consent in writing of one of the canal commissioners, or of a superintendent of repairs, on that line of the canal which is intersected by the road. Model and location.

§ 762. (*R. S.*, § 176.) Every person who shall undertake to construct or to locate such bridge without such consent, and shall proceed therein, so far as to place any materials for that purpose, on either bank of the canal, or on the bottom thereof, shall forfeit the sum of fifty dollars; and either of the commissioners, superintendents or engineers, shall be authorized to remove all such materials, as soon as they are discovered, wholly without the banks of the canal. Penalty.

§ 763. (1839, *ch.* 207, § 1, *amended* 1854, *ch.* 332, § 7.) The canal commissioners are hereby authorized and required to construct and hereafter maintain at the public expense, road and street bridges over the enlarged Erie canal, [the enlarged Oswego, the enlarged Cayuga and Seneca canals, and the Cayuga inlet], in all places where such bridges have been heretofore constructed, if in their opinion the public convenience requires that they should be continued, whether the same have been heretofore maintained at the expense of the state, or of the towns, cities or villages where they are situate.<sup>1</sup> Road and street bridges, where to be constructed.

<sup>1</sup> See note, next page.

Farm  
bridges.

§ 764. (*Same ch.*, § 2, amended 1854, *ch.* 332, § 7.) The said commissioners are also authorized to construct farm bridges over said [enlarged Erie] canal, [the enlarged Oswego, the enlarged Cayuga and Seneca canals, and the Cayuga inlet], in all places where the same, in their opinion, are reasonably required, in reference to the accommodation of the owner of the land and a due regard to economy, to the state, and the convenience of navigation. But neither this nor the preceding section shall be construed to abridge the power of the canal commissioners in relation to streets, roads and bridges, as now provided by law.<sup>1</sup>

Proviso.

Benefits  
from  
bridges to  
be set off  
against  
damages.

§ 765. (*Same ch.*, § 3.) Whenever a farm bridge shall be constructed in lieu of one heretofore maintained by the owner or owners of the land, and damages shall be claimed by such owner or owners for the appropriation of lands or other injury done in such enlargement,<sup>1</sup> the benefit derived by such owner or owners, by being relieved from the expense of maintaining the former bridge over the canal, shall be set off against any damages so claimed.

Commuta-  
tion for  
bridges.

§ 766. (*Same ch.*, § 4, amended 1840, *ch.* 372, § 1.) The said commissioners are also hereby authorized in all cases where in their opinion the same can be done consistent with the public interest, to commute with owners and claimants of

<sup>1</sup> Sections 1, 2 and 3, of *ch.* 207, Laws of 1839, as amended by *ch.* 332, of 1854, seem to apply only to bridges over the enlarged Erie, Oswego, and the Cayuga and Seneca canals, and Cayuga inlet, and not to the other canals of this state.

Sections 1 and 2 are also limited by the provisions of sections 6 and 9, *ch.* 332, of 1854. See *post* § 772 and § 774.

This compilation of the law of 1839 as amended, differs from that of the manual of canal laws now in use, and from the 5th (Parker's) ed. *Rev. Stat.* In that edition, Vol. 1, p. 361, \* § 309, there is inserted in 1839, *ch.* 307, § 1, the words, "[several canals of this state]," as an amendment made by 1840, *ch.* 372. This is clearly incorrect.

1840, *ch.* 372, makes the provisions of the "fourth" section only of the law of 1839 applicable to the "several canals of this state." 1854, *ch.* 332, § 7, provides that the law of 1839, and all existing laws relating to bridges over the enlarged Erie canal, shall apply to the enlarged Oswego, and Cayuga and Seneca canals, and the Cayuga inlet, but makes no mention of the seven other canals of the state.

Unless general powers can be implied as to road and street bridges, by the exception contained in § 9, *ch.* 332, of 1854, § 1, *ch.* 207, of 1839, is limited to the canals above named. See also Gov. Hoffman's vetoes, 1870, p. 68.



bridges over the [several canals of this state] by paying such owner or claimant such sum in lieu of a bridge as may be agreed upon between the claimant and said commissioners. And in all cases where in the opinion of said commissioners a bridge over the canal ought not to be rebuilt, and the sum to be paid for commutation shall not be agreed upon as aforesaid, the said bridge shall not be built, but the damages sustained by such owner or owners by being deprived of such bridge, and which the state, under all the circumstances, ought of right to pay, shall be appraised by the canal appraisers and paid by said commissioners.

Damages  
for not  
building.

§ 767. (*Same ch.*, § 5.) In all cases where damages shall be claimed for being deprived of a bridge which the claimant had before constructed or maintained, the circumstance of his being equitably bound to contribute toward the construction and maintenance of an enlarged bridge, a sum equal to the expense of the maintenance of a bridge proportioned to the size of the original canal shall be taken into consideration by the appraisers, and a proper amount on that account shall be set off against any damages to which the claimant might otherwise be entitled.

Benefits  
set off  
against  
damages.

§ 768. (*Same ch.*, § 6.) The proceedings in relation to the appraisement of such damages, shall be in all respects the same as the proceedings in relation to the appraisal of damages for lands, streams or waters appropriated by the canal commissioners to the use of the public; and appeals from such appraisement may be made in the same manner.

Appraise-  
ment, how  
to be  
made.

§ 769. (1840, *ch.* 372, § 1.) The provisions of the fourth section of the "Act in relation to bridges over the enlarged Erie canal," passed April 20, 1839 (*ch.* 207), shall be applicable to the several canals of this state.

§ 770. (*Same ch.*, § 2.) Whenever the canal commissioners shall deem that the state may be reasonably required to erect a farm bridge over any of the canals of this state, for the accommodation of the owner or owners of adjacent lands, and they cannot commute for said bridge with such owner and claimant on satisfactory terms, in case the said commissioners determine that a private road through adjacent lands will sufficiently accommodate such owner or claimant, they are hereby authorized to apply to the commissioners of highways of the

Private  
road to  
bridges,  
how to be  
made.

town in which such lands lie, to lay out a private road for the accommodation of such owner and claimant, under the provisions of article four, chapter sixteen, title first, part first of the Revised Statutes; and such damages as may be assessed to the owner of the lands through which said road is laid out, shall be paid by the commissioners, when the same can be done with a due regard to economy to the state.<sup>1</sup>

Certificate  
of title  
before  
payment  
of dam-  
ages.

§ 771. (1854, *ch.* 332, § 5.) Before the auditor shall be required to pay any damages that may be awarded, or the amount of any commutation agreed on for the appropriation of land or water, or for the want of a farm bridge, he shall be furnished with a satisfactory abstract of title, and certificate of search as to incumbrances, showing the person demanding such damages or commutation to be legally entitled thereto, which abstract and search shall be retained and filed in his office.

Farm  
bridges.

§ 772. (*Same ch.*, § 6.) No person shall be entitled to demand a farm bridge across any of the state canals or their feeders, in any case when the necessity or convenience of such bridge shall have arisen, from the division or acquisition of any property subsequent to the location of such canal or feeder.

Bridges  
over  
enlarged  
canals.

§ 773. (*Same ch.*, § 7.) Chapter two hundred and seven of the laws of eighteen hundred and thirty-nine, and all other existing laws in relation to bridges over the enlarged Erie canal, shall be applicable to bridges over the enlarged Oswego and the enlarged Cayuga and Seneca canals and the Cayuga inlet.

Street and  
road  
bridges.

§ 774. (*Same ch.*, § 9.) Hereafter no street or road bridges shall be constructed by the canal commissioners over any canal of this [state],<sup>2</sup> except upon such streets or roads as were laid out, worked and used previous to the construction of the canals by which such streets or roads were obstructed.

§ 775. (*Same ch.*, § 10.) All laws in force in this state inconsistent with the provisions of this act are hereby repealed.

No driv-  
ing over  
State  
bridges  
faster  
than a  
walk.

§ 776. (1862, *ch.* 354, § 1.) It shall not be lawful for any person to lead, ride or drive any horse or horses, mule or

<sup>1</sup> A similar rule applied to bridge at Frankfort by 1863, *ch.* 275.

<sup>2</sup> Not in the statutes as printed.

mules, faster than on a walk over any bridge belonging to or under the control of this state, which is now or may hereafter be erected over any canal, canal feeder, stream or river thereof.

§ 777. (*Same ch.*, § 2.) No person shall hereafter drive Cattle. any cattle across any bridge or bridges referred to in the first section of this act, at a faster rate than upon a walk, and shall not in so driving them over, permit more than twenty-five cattle to be upon any such bridge at one time.

§ 778. (*Same ch.*, § 3.) Any person violating either of the Penalty. provisions of this act shall be liable to a penalty, for each offense, fifteen dollars, to be sued for and recovered in any court having cognizance thereof, by the contractor, in the name of the people of this state, whenever such bridge or bridges, where the offense shall be committed, shall be embraced within his repair contract, and in all other cases by the superintendent of canal repairs. Such penalty when recovered shall be credited to the state in the first settlement thereafter of the accounts of such contractor or superintendent with the state.

§ 779. (1872, *ch.* 784, § 1.) The canal commissioners are hereby authorized and directed to maintain and protect the Bridges  
over  
Black  
river. bridge across Black river, between the towns of Lowville and New Bremen, known as the Illingworth bridge; also the bridge between the towns of Lowville and Watson, known as Beach's bridge; that before proceeding to maintain or protect said bridges, the canal commissioners shall require and receive a full and sufficient release legally executed, acknowledged and delivered, free of expense to the state, of all claims for damages in consequence of the construction of such bridges or of the approaches or embankments of the same, and also a good and sufficient license or permission to the state, duly executed, acknowledged and delivered as aforesaid, to alter, raise or change such bridge, approaches or embankments whenever necessary, which necessity is to be determined by the canal commissioners, from all persons whose property, rights or interests may be effected by such bridge, approaches or embankments.<sup>1</sup>

<sup>1</sup> For previous legislation, relating to these bridges on Black river, see Laws of 1828, ch. 136; 1866, ch. 603; 1869, ch. 867. For statutes relating to Parker's Landing bridge, see 1865, ch. 708; 1866, ch. 493; 1867, ch. 963; 1869, ch. 877, and 1872, ch. 850. For other statutes, relating to bridges across Black river, see 1821, ch. 107; 1857, ch. 429; 1858, ch. 115; 1860, ch. 213, and 1864, ch. 174.

Fort Miller bridge free to canal employees.

§ 780. (1837, *ch.* 391, § 1.) It shall not be lawful for the Fort Miller Bridge Company to demand or receive any tolls from any persons, for passing the tow-path bridge connected with the bridge of the said company, who may be actually employed by the state in superintending or repairing the Champlain canal (or who may be navigating the same).<sup>1</sup>

Tow-path bridge, Cohoes.

§ 781. (1853, *ch.* 393, § 1.) The canal commissioners are hereby authorized to construct a tow-path bridge, under the direction of the canal board, across the Mohawk river at the village of Cohoes. The canal board are also authorized to make such arrangement with the inhabitants of said village of Cohoes as they deem proper, whereby the said inhabitants may be permitted to contribute to the building of said bridge so much as to satisfy the state for constructing an additional wagon track or tracks for the use of said inhabitants.<sup>2</sup>

§ 782. (*Same ch.*, § 2.) The state shall retain the control of said bridge, and it shall at all times be subject to such alterations as the proper officers, under the direction of the canal board, may choose to make; the inhabitants shall contribute their proportion to the repairs of said bridge.<sup>3</sup>

Canal across Water street, West Troy, and bridge.

§ 783. (1869, *ch.* 425.) Richard F. Hall, John A. Russell and George B. Moshier are hereby authorized to open and maintain a canal across Water street, between Genesee and Huron streets, in the village of West Troy, to connect the waters of the canal basin, of which the said persons are part owners, with a side-cut canal on the premises of the parties aforesaid, providing the said canal across Water street shall not exceed twenty feet in width, and providing that the parties aforesaid shall properly dock the same, and shall place

<sup>1</sup> Laws of 1827, *ch.* 219, § 39, prohibiting the driving of horses or cattle over the towing-path bridge across the Hudson river, near the Fort Miller bridge, except for purposes connected with navigation, and imposing penalties, seems to be still in force. The rest of the act was repealed; 1828, 2d Session, *ch.* 21.

As to the present use by the state of towing-path bridge of Fort Miller Bridge Company, see canal board proceedings, 1869, page 250.

As to bridge over Genesee river, at Mount Morris, see canal board proceedings, 1870, page 210.

<sup>2</sup> For laws relating to Cohoes bridge, see Laws 1806, April 4th; 1825, *ch.* 227, § 2; 1829, *chs.* 111 and 202; 1835, *ch.* 255; 1841, *ch.* 190.

See, also, canal board proceedings, April, 1841, July, 1845, July and October, 1853, June, 1854, March, 1860, and report and petition adopted May 3d, 1860.

and maintain a bridge across the said canal at Water street aforesaid for the convenience of public travel.

## OF WHARVES, BASINS, ETC.

§ 784. (*R. S.*, § 177.) No person, without the written permission of a canal commissioner, shall construct any wharf, basin or watering place, on any canal, or make or apply any device whatever, for the purpose of taking water from a canal; and every wharf, basin, watering place or device, constructed with such permission, shall be held during the pleasure of the canal commissioners, and be subject to their control.

Wharves,  
basins,  
etc.

§ 785. (*R. S.*, § 178.) Every person who shall construct any such wharf, basin, watering place or device, without permission, or who shall omit to conform to the directions of the commissioner granting such permission, shall for each offense forfeit the sum of twenty-five dollars; and in every such case, the canal commissioners may remove or destroy the construction illegally made, at the expense of the person making it.

Penalty.

## OF INJURIES TO STRUCTURES.

§ 786. (*R. S.*, § 179.) Every person who shall wantonly open or shut, or cause to be opened or shut, any lock-gate, or any puddle-gate or culvert-gate, thereof, or any waste-gate, or by any means prevent, or attempt to prevent, the free use of any such gate; and every person who shall wantonly break, throw down, or destroy any bridge, or fence, on a canal, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment; the fine for each offense, not to exceed one hundred dollars nor the imprisonment six months.

Injuries to  
gates,  
bridges,  
fences.

§ 787. (*R. S.*, § 180.) Every person who shall willfully break, throw down, or destroy any lock, bank, waste-water, dam, aqueduct or culvert, on any canal, shall, upon conviction of such offense, be sentenced to imprisonment in the county jail or state prison, at the discretion of the court by whom he shall be tried. The imprisonment shall not be for less than one year, if in the county jail, nor for more than three years, if in the state prison.

Injuries to  
locks, etc.

§ 788. (*R. S.*, § 181.) Every person who shall lead, ride or drive any horse, ox, ass, mule, or other cattle, upon the towing path of a canal, or upon the bank opposite to such towing path, shall, for each offense, forfeit the sum of five dollars;

Driving  
horses on  
tow path,  
etc.  
62. Barb.  
299.

but this section shall not be construed to extend to persons towing boats or other floats, or conveying articles unladen, or to be laden, from, or to, a canal.

Penalty  
for draw-  
ing water  
at Lock-  
port.

§ 789. (*R. S.*, § 182.) Any person who shall open any gate, sluice, slide or other passage, which now is or hereafter may be constructed to draw water round the locks at Lockport, for the purpose of drawing water from the canal to any mill or machinery of any kind whatsoever, or for any other purpose than the uses of the canal, shall, for every such offense, forfeit the sum of two hundred and fifty dollars.

## ARTICLE IX.

### MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

SECTION 800. Agents, collectors, superintendents, etc., discharged from employment, to deliver up any house, etc., occupied by them, etc.; books, papers, etc.

801. Proceedings to compel delivery.

802. Who ineligible to office of superintendent, collector, lock-keeper, etc.

803. Canal officers not to be interested in hydraulic works, canal boats, contracts, etc.

804. When charges against canal officers to be investigated, and by whom.

805. Superintendents, collectors, etc., exempt from military duty, and serving on juries.

806. Suits for penalties, etc., under this title, to be in name of people; moneys recovered to be paid to the treasurer.

807. If penalty not over fifty dollars, justice has jurisdiction.

808. Definition of the terms "float" and "master" under this title.

809. Executions shall issue for penalties.

810. Recovery of penalty not a bar to damages.

811. Auditor to prepare forms of clearances, etc., and send them to officers on canals.

812. How much water to be taken into a level.

813. How waste-weirs and gates shall be constructed.

814. Willful destruction of boats, etc., with intent to defraud owner or shipper, deemed a felony; penalty.

815. Destruction by owners, with intent to defraud others, a felony; penalty.

816. Attempt to injure or destroy boats, etc., with intent to defraud, a felony; penalty.

### STEAM TOWAGE ON THE CANALS — EUROPEAN SYSTEM.

817. Addison M. Farwell may organize a company to introduce the European system of steam-towage.

818. Privileges and provisions.

819. Interference with or injuries to chains or cables, how punished.

- 820. Materials and property used exempt from tolls.
- 821. System to be introduced within eighteen months or privileges granted shall cease.
- 822. System subject to rules and regulations for navigation.
- 823. Legislature may alter, modify or repeal.

BY CABLES OR RAILS SUSPENDED OVER CANAL.

- 824. N. W. Kingsley and C. H. Gardner may organize a company to use their system of steam-towage.
- 825. Privileges and provisions.
- 826. Materials and property exempt from tolls.
- 827. System to be introduced within three years or privileges granted shall cease.
- 828. System subject to rules and regulations for navigation.
- 829. Legislature may alter, modify or repeal.

THE AMERICAN SYSTEM.

- 830. J. Richmond and W. S. Farwell authorized to form a company to introduce their system of cable towage.
- 831. Privileges and provisions.
- 832. Materials and property exempt from tolls.
- 833. System to be introduced within eighteen months or privileges granted shall cease.
- 834. System subject to rules and regulations for navigation.
- 835. Legislature may modify, alter, or repeal.

BY STEAM WAGON.

- 836. D. O. Williamson allowed five miles of canal to test road steam engine for towage of boats, under direction of commissioners.

COMMISSION TO TEST THE USE OF ANY MOTOR OTHER THAN ANIMAL POWER AND TO AWARD PRIZES.

- 837. Commission appointed to test and examine inventions or devices, which may be practically and profitably used in the propulsion of boats upon the canals; terms and conditions.
- 838. Tests not to interfere with navigation.
- 839. May grant certificates, etc., for prizes.
- 840. Oath and vacancies.
- 841. Reasonable expenses to be paid.
- 842. Payment of certificates.
- 843. Payment of further certificates when granted.
- 844. Powers of commissioners extended one year.

MISCELLANEOUS PROVISIONS OF A GENERAL NATURE.

§ 800. (*R. S.*, § 183.) It shall be the duty of every agent, toll-collector, lock-keeper or superintendent, employed on any canal, and occupying any house, office, building or land, belonging thereto, who shall be discharged from his employment; and of the wife and family, of every such person, who shall die in such employment; to deliver up the possession of the premi-

Agents to deliver up property, etc.

ses so occupied, and of all books, papers, matters or things belonging to the canals, acquired by virtue of his office, within seven days, after a notice shall have been served for that purpose, by the acting canal commissioner.

Proceed-  
ings to  
compel  
delivery.

§ 801. (*R. S.*, § 184.) In case of a refusal or neglect to make such delivery, in either of the above cases, it shall be the duty of any justice of the peace, in the county where such premises shall be situate, upon application, to issue his warrant under his hand and seal, ordering any constable or other peace officer, with such assistance as may be necessary, to enter upon the premises so occupied, in the day-time, and remove therefrom all persons found in possession thereof, and to take into his custody all books, papers, matters and things there found, belonging to the canals, and to deliver the same to the acting canal commissioner, or his authorized agent; and the officer to whom such warrant shall be delivered, shall execute the same according to its purport.

Who in-  
eligible as  
collector,  
superin-  
tendent,  
lock-  
keeper,  
weigh-  
master,  
etc.

§ 802. (*R. S.*, § 185.) No person owning any hydraulic works dependent upon the canals for their supply of water, or who shall be employed in or connected with any such works, or who shall be engaged in transporting property upon the canals, or who shall own, or be interested in, any boat, navigating the same, shall be employed as a superintendent, lock-keeper, collector of tolls, weigh-master, or other agent upon the canals.

Canal  
officials  
not to be  
interested  
in con-  
tracts.

§ 803. (*R. S.*, § 186; *amended*, 1843, *ch.* 181, § 1.) No canal commissioner or other member of the canal board, or superintendent, engineer or person holding any appointment under the canal commissioners or any one of them, or under any superintendent of repairs, or other officer on the canals, shall hereafter become interested in any hydraulic work dependent on the canals for a supply of water, or become interested in any line of boats regularly navigating the canals, or shall either directly or indirectly become interested in any contract on the canals as a contractor, surety or otherwise, either in his own name or in the name of any other person, or shall either directly or indirectly derive any benefit from the ordinary or extraordinary expenditures on the canals beyond his established compensation; and if any canal commissioner, member of the canal board, superintendent, engineer or person holding any appoint-



ment under the canal commissioners or any one of them, or under any superintendent of repairs or other officer on the canals, shall at any time hereafter become interested or derive any benefit as aforesaid, he shall forfeit his office or appointment.

§ 804. (1843, *ch.* 181, § 2.) Whenever charges shall be preferred under the above section, against any engineer or other officer or person holding their appointment from the canal commissioners or any one of them, or from a superintendent of repairs or other officer on the canals, it shall be the duty of the board of canal commissioners to investigate the same; and whenever charges are preferred against any officer holding his appointment from the canal board, it shall be the duty of the canal board to investigate said charges; and it shall be the duty of said boards, respectively, to dismiss said officers or persons if the charges are sustained; and all contracts made in violation of this act, are hereby declared to be void.

When charges to be investigated by canal commissioners.

When by canal board.

§ 805. (*R. S.*, § 187.) Every collector of tolls, the clerks of each collector, not exceeding two, having the collector's certificate that they are actually employed by him, and all superintendents of repairs, lock-tenders, inspectors of boats and weighmasters, shall be exempted from the performance of military duty, and jury service, while actually engaged in their respective employments on the canals, while the same are navigable.

Superintendents, collectors, etc., exempt from certain duties.

§ 806. (*R. S.*, 188; *amended* 1835, *ch.* 21, and 1848, *ch.* 162.) All suits for penalties and forfeitures imposed in any article of this title, or for damages, in behalf of the state, shall be prosecuted in the name of the people of this state, by such persons and in such manner as the [canal board] in their regulations, shall direct; and all moneys recovered therein, shall be accounted for and paid over to [the treasurer of the state].

Penalties, how recovered.

§ 807. (*R. S.*, § 189.) Every such penalty or forfeiture, not exceeding the sum of fifty dollars, may be recovered before any justice of the peace in any county.

Before whom.

§ 808. (*R. S.*, § 190.) The term "float," as used in this title, shall be construed to embrace every boat, vessel, raft, or floating thing, navigated on the canals, or moved thereon, under the direction of some person having the charge thereof; and the term "master," as so used, shall be construed to apply

Definition of "float," and "master."

to every person, having for the time, the charge, control, or direction, of any such float.

Execu-  
tions for  
penalties.

§ 809. (*R. S.*, § 191.) If any person against whom any forfeiture shall be recovered under the provisions of this title, shall not immediately pay the full amount of the judgment so obtained, the court by which such judgment shall be given, shall, without delay, issue an execution against his property or person, at the election of the party prosecuting the suit.

Penalty no  
bar to  
damages.

§ 810. (*R. S.*, § 192.) The imposition or recovery of any penalty or forfeiture, imposed for the violation of any provision of this title, shall not be considered a bar to the recovery of any damages, resulting from such violation, to the state or to individuals.

Auditor to  
prepare  
forms.

§ 811. (*R. S.*, § 193; *modified*, 1848, *ch.* 162.) The [auditor] shall prepare the forms of all clearances, bills of lading, statements, and other papers necessary to be used under the provisions of this title, and shall from time to time, transmit the same to the different officers and agents on the canal, for whose use they may be required.

How  
much  
water to  
be taken.

§ 812. (*R. S.*, § 194.) No more water shall be taken into any level of either of the canals, than shall be sufficient to supply such level during the days of the greatest business, and also to supply any other level of the canal, or other public work of the state, dependent upon such level for a supply of water.<sup>1</sup>

Waste  
weirs.

§ 813. (*R. S.*, § 195.) Every waste-weir upon the same level as either of the canals, shall be constructed, as nearly as may be consistent with the safety and convenience of the canals, of the same height, but in all cases so, as to leave a depth of at least four feet water in the level; and there also shall be constructed one waste gate, as nearly opposite to the mouth of every feeder taken into the canal, as the convenient discharge of the water will permit.

Willful  
destruction  
of  
boats, etc.,  
shall be  
deemed  
a felony.

§ 814. (1870, *ch.* 299, § 1.) If any person or persons shall willfully or corruptly cast away, burn, sink, scuttle or otherwise destroy any vessel, canal boat or other craft upon any of the lakes or other navigable inland waters of this state, or

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<sup>1</sup> See canal board proceedings, 1868, page 37.

upon any canal of this state, with intent to injure or defraud any owner of such vessel, canal boat or other craft, or with intent to injure or defraud the owner or owners of any property shipped or laden on board the same for transportation, or with intent to injure or defraud any insurer of such vessel, canal boat or other craft, or of any property so shipped or laden thereon, or of any part thereof, the person or persons so offending shall, upon conviction thereof, be deemed and adjudged guilty of a felony, and shall be punished by imprisonment in a state prison for a term not less than two years. Penalty.

§ 815. (*Same ch.*, § 2.) Any owner or owners of any vessel, canal boat or other craft, or any other person who shall, upon any of the lakes or other inland navigable waters of this state, or upon any canal of this state, willfully or corruptly cast away, burn, sink, scuttle or otherwise destroy or injure any such vessel, canal boat or other craft, or in any manner direct, procure or cause the same to be done, with intent to injure or defraud any owner or owners of any property shipped or laden on board the same, or any insurer of such property, or of any part thereof, shall, upon conviction thereof, be deemed and adjudged guilty of a felony, and shall be punished by imprisonment in a state prison for a term not less than two years. Destruction by owners, with intent to defraud others, a felony.

§ 816. (*Same ch.*, § 3.) Any person or persons who shall willfully or corruptly attempt to cast away, burn, sink, scuttle or otherwise destroy any vessel, canal boat or other craft upon any of the lakes or other navigable inland waters of this state, or upon any canal of this state, with intent or design to injure or defraud the owner or owners of such vessel, canal boat or other craft, or the owner or owners of any property shipped or laden on board the same, or any insurer of any such vessel, canal boat or other craft or property, or any part thereof shall, upon conviction thereof, be adjudged guilty of a felony, and shall be punished by imprisonment in a state prison for a term not less than one year.<sup>1</sup> Attempt to injure or destroy boats, a felony. 62. Barb. 150.

#### STEAM TOWING ON THE CANALS.

##### THE EUROPEAN SYSTEM.

§ 817. (1870, *ch.* 576, § 1.) Permission is hereby granted to Addison M. Farwell, of Watertown, New York, his associates and successors, who may organize a corporation under the act

<sup>1</sup> For amendt. Rev. Stat. relating to wrecks on any inland lake or river see 1869, ch. 493.

entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes," passed February 17th, 1848, and any act or acts amendatory thereof, to introduce upon the canals of this state the "European system" of steam towing.

§ 818. (*Same ch.*, § 2.) The said Farwell, his associates and successors, who shall organize as provided in previous section, are hereby authorized and empowered to tow boats, floats and cargoes on the canals of this state for hire, and for that purpose may purchase and construct, or cause to be constructed, the necessary appliances for carrying on the business of canal towing under the said European method, and shall have the exclusive right and privilege, during the term for which said corporation may be organized, to submerge or place one or more chains or cables on the bottom of the canals of this state, and attach the same thereto in such manner as will not interfere with navigation; and shall have exclusive right to use such submerged chains and cables, designated and known as the European system, in the prosecution of the peculiar method of towing thereby. And whenever and wherever it may be necessary so to do, the said Farwell, his associates and successors, or corporation aforesaid, are hereby authorized and empowered to own and employ other motive power in connection with said chain or cable process, provided the same shall not interfere with navigation. Nothing, however, in this section contained shall be construed as excluding other parties from the right or privilege of propelling or towing themselves or others by the agency of steamboats, propellers, elevated railway or animal power, but simply to vest in the said Farwell, his associates and successors, or corporation organized as aforesaid, the exclusive right to lay and use chains or cables in the prosecution of the European system of towing thereby.

§ 819. (*Same ch.*, § 3.) Any person who shall meddle with or disturb the chains or cables, authorized to be laid under this act, with intent to injure the same, or in any manner to embarrass the operation thereof, or any person who shall willfully obstruct or interfere with boats rightfully using said chains or cables, or towed thereby, shall be deemed guilty of a misdemeanor punishable by fine or imprisonment, the fine not to exceed two hundred dollars, and imprisonment not to exceed three months. And any person who shall willfully

injure the chains or cables as aforesaid, or, by other improper conduct, shall detain the boats rightfully using said chains or cables, or being towed thereby, shall be liable, to the parties aggrieved, for all damages occasioned by said injury or detention.

§ 820. (*Same ch.*, § 4.) The tugs, with machinery connected therewith, employed by said Farwell, his associates and successors, or corporation aforesaid, in the prosecution of towing, together with the fuel necessary to the voyage carried thereon, shall be exempt from the payment of tolls.

§ 821. (*Same ch.*, § 5.) In case said Farwell, his associates and successors, or corporation aforesaid, shall neglect or fail to introduce said system of towing on the Erie canal within eighteen months after the passage of this act, all rights and privileges herein granted shall cease.

§ 822. (*Same ch.*, § 6.) Nothing herein contained shall be construed to exclude the system of towage hereby authorized from the supervision and control of the canal board; but the same shall be subject to all the rules and regulations from time to time established by the canal board for the navigation of the canals.

§ 823. (*Same ch.*, § 7.) The legislature may, at any time, alter, modify or repeal this act.

BY CABLES OR RAILS SUSPENDED OVER CANAL.

§ 824. (1870, *ch.* 655, § 1.) Permission is hereby granted to Norman W. Kingsley of New York, and Charles H. Gardner of Brooklyn, their associates and successors, who may organize a corporation under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes," passed February 17, 1848, and any act or acts amendatory thereto, to introduce upon the canals of this state an improved system of steam towage, by the use of chains, cables or rails suspended over the canal, under a patent or patents to be held or acquired by said corporation, with the exclusive right to use the said system thereon, during the full term for which the said corporation may be organized.

§ 825. (*Same ch.*, § 2.) The said Norman W. Kingsley, Charles H. Gardner, their associates and successors, as heretofore specified, are hereby authorized and empowered to transport cargoes, and to tow boats and floats, loaded or unloaded, for hire, upon the canals of this state, at a rate of speed not exceeding four miles per hour, and which shall not work injury thereto, and for such purpose may purchase, contract, erect and use thereon, such boats, boilers, engines, apparatus, suspended rails, chains or cables, and machinery, as shall be necessary to apply and operate said improved system of steam towage, in such manner as shall not interfere with navigation on said canals. Nothing, however, in this section contained shall be construed as excluding other parties from the right or privilege of propelling or towing any boat or float upon the canals of this state by the agency of steamboats, propellers, tugs, chains, cables, elevated railways, engines or animal power, but simply to vest in the said Norman W. Kingsley, Charles H. Gardner, their associates and successors, or corporation organized as aforesaid, the exclusive right to apply and operate the said improved system of towage.

§ 826. (*Same ch.*, § 3.) The machinery, engines and boilers used in pursuance of this act, the boats carrying the same, and the fuel necessary for the voyage, shall be exempt from the payment of tolls upon all the canals in this state.

§ 827. (*Same ch.*, § 4; *amended 1871, ch. 903.*) In case the said Norman W. Kingsley, Charles H. Gardner, their associates and successors, or corporation aforesaid, shall neglect or fail to introduce said system of towing on the Erie canal within three years after the passage of this act, all rights and privileges herein granted shall cease.

§ 828. (*Same ch.*, § 5.) Nothing herein contained shall be construed to exclude the system of towage hereby authorized from the supervision and control of the canal board, but the same shall be subject to all the rules and regulations established, and to be established, by the canal board for the navigation of the canals.

§ 829. (*Same ch.*, § 6.) The legislature may, at any time alter, modify or repeal this act.

## THE AMERICAN SYSTEM.

§ 830. (1871, *ch.* 911, § 1.) Permission is hereby granted to James Richmond and William S. Farnell, of the city of Lockport, New York, their associates and successors, who may organize a corporation under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes," passed February 17, 1848, and any act or acts amendatory thereof, to introduce upon the canals of this state an improved system of cable towage, under a patent or patents to be held or acquired by said corporation, with the exclusive right to use the said system thereon, during the full term for which said corporation may be organized.

§ 831. (*Same ch.*, § 2.) The said James Richmond, William S. Farnell, their associates and successors, as heretofore specified, are hereby authorized and empowered to transport cargoes, and to tow boats and floats, loaded or unloaded, for hire, upon the canals of this state, at a rate of speed not exceeding four miles per hour, and which shall not work unusual and permanent injury thereto, and for such purpose may purchase, construct, erect and use thereon, such boats, boilers, engines, apparatus, chains, cables, structures and machinery, as shall be necessary to apply and operate said improved system of cable towage, in such manner as shall not interfere with navigation on said canal. Nothing, however, in this section contained, shall be construed as excluding other parties from the rights or privileges of propelling or towing any boats or floats upon the canals of this state, by the agency of steamboats, propellers, tugs, chains, cables, elevated railways, engines or animal power, but simply to vest in the said James Richmond and William S. Farnell, their associates and successors, or corporation organized as aforesaid, the exclusive right to apply and operate the said improved system of cable towage.

§ 832. (*Same ch.*, § 3.) The machinery, engines and boilers, used in pursuance of this act, the boats carrying the same, and the fuel and materials necessarily used in propelling the necessary boats and machinery to operate said towage system, shall be exempt from the payment of tolls upon all the canals of this state, but in no case shall fuel or material be

exempt from payment of tolls, except when on boats actually using the same.

§ 833. (*Same ch.*, § 4.) In case the said James Richmond, William S. Farnell, their associates and successors, or corporation aforesaid, shall neglect or fail to introduce said system of towage on the Erie canal, within eighteen months after the passage of this act, all rights and privileges herein granted shall cease.

§ 834. (*Same ch.*, § 5.) Nothing herein contained shall be construed to exclude the system of towage hereby authorized from the supervision and control of the canal board, but the same shall be subject to all the rules and regulations established, and to be established, by the canal board, for the navigation of the canals.

§ 835. (*Same ch.*, § 6.) The legislature may, at any other time, repeal, alter or modify the provisions of this act.

#### BY STEAM WAGON.

§ 836. (1872, *ch.* 550, § 1.) The canal commissioners are hereby authorized and directed to allot and set out to D. O. Williamson a distance on the Erie canal of not less than five miles, at such point as may be most convenient and suitable, for the purpose of experimenting with his road steam engine for the towage of boats, said experiments being made under the direction of said commissioners.

#### COMMISSION TO TEST THE USE OF ANY MOTOR OTHER THAN ANIMAL POWER, AND TO AWARD PRIZES.

Commission to test new methods of propulsion of boats.

§ 837. (1871, *ch.* 868, § 1.)<sup>1</sup> George B. McClellan, Horatio Seymour, Erastus S. Prosser, David Dows, George Geddes, Van R. Richmond, Willis S. Nelson, George W. Chapman, William W. Wright and John D. Fay, are hereby appointed a commission to practically test and examine inventions, or any and all devices which may be submitted to them for that purpose, by which steam, caloric, electricity, or any other motor than animal power, may be practically and profitably

<sup>1</sup> "An act to foster and develop the internal commerce of the State, by inviting and rewarding the practical and profitable introduction upon the canals of steam, caloric, electricity, or any motor other than animal power, for the propulsion of boats."



used and applied in the propulsion of boats upon the canals; said examination and tests shall be had by the said commissioners at such time or times during the season of canal navigation, for the years eighteen hundred and seventy-one and seventy-two, as they may order and direct; said commissioners shall have the right, and they are hereby expressly required, to reject all such inventions or devices, if in their opinion none of the said inventions or devices shall fully and satisfactorily meet the requirements of this act; but said commissioners shall demand and require: *First*, The inventions or devices to be tested and tried at their own proper costs and charges of the parties offering the same for trial. *Second*, That the boat shall, in addition to the weight of the machinery and fuel reasonably necessary for the propulsion of said boat, be enabled to transport, and shall actually transport, on the Erie canal on a test or trial exhibition, under the rules and regulations now governing the boats now navigating the canals, at least two hundred tons of cargo. *Third*, That the rate of speed made by said boat shall not be less than an average of three miles per hour, without injury to the canals or their structures. *Fourth*, That the boat can be readily and easily stopped or backed by the use and power of its own machinery. *Fifth*, That the simplicity, economy and durability of the invention or device must be elements of its worth and usefulness. *Sixth*, That the invention, device or improvement can be readily adapted to the present canal boats; and, lastly, that the commissioners shall be fully satisfied that the invention or device will lessen the cost of canal transportation and increase the capacity of the canals. Any means of propulsion or towage other than by a direct application of power upon the boat, which does not interfere in any manner with the present method of towage on the canals, and complying in all other respects with the provisions of this act, may be entitled to the benefits thereof; but this shall not be construed to apply to the system known as the Belgian system, or to any mode of propulsion by steam engines or otherwise upon either bank of the canals.

§ 838. (*Same ch.*, § 2.) No such test shall be made if the same shall in any manner retard, hinder, or delay the passage of boats navigating the canals under the present system.

Not to  
hinder  
naviga-  
tion.

May grant  
certifi-  
cates, etc.

§ 839. (*Same ch.*, § 3.) If the commissioners herein appointed shall, upon such examination and test as is provided for in the first section of this act, conclude and determine at any time that one or more inventions or devices aforesaid, but not to exceed three in number, shall be in all respects a full and satisfactory, practicable and profitable adaptation to the wants of the canals by reason of a new, useful and economical means of propulsion for boats within the meaning of this act, it shall then, and not otherwise, be their duty to grant unto the owner or owners of such inventions or devices, his or their attorney, their certificate or certificates under their hands as such commissioners, that they have so determined and adjudged to the owner or owners of the invention or device which, in the judgment of said commissioners, possesses in the greatest degree of perfection the requisites mentioned in the first section they shall grant a certificate which shall be known as certificate No. one; and to the owner or owners of the next best invention or device, they shall grant a certificate as aforesaid, which shall be known as certificate No. two; and to the owner or owners of the third best invention or device, they shall grant a certificate as aforesaid, which shall be known as certificate No. three.

Oath and  
vacancies.

§ 840. (*Same ch.*, § 4.) Before entering upon the duties of his office each of the commissioners herein named shall take and subscribe an official oath, which shall be filed at once in the office of the secretary of state. Any vacancy arising from any cause in said commission, may be filled, on the application of the remaining commissioners, by the governor.

Reason-  
able ex-  
penses to  
be paid.

§ 841. (*Same ch.*, § 5.) The reasonable expenses of the said commission, not exceeding in all the sum of five thousand dollars, to be determined by the said board, shall be paid out of any sum which may be awarded to the person or persons receiving the certificates mentioned in the third section of this act, in proportion to the amount awarded to the holders of said certificates, providing such certificates shall be granted; and if no such certificate shall be granted, then the same shall be paid by the treasurer on the warrant of the comptroller out of any moneys in the treasury not otherwise appropriated.

Payment  
of certifi-  
cates.

§ 842. (*Same ch.*, § 6.) Upon the production by the owner or owners, or his or their attorney, of such certificate or cer-

tificates as may be granted under the provisions of this act, to the comptroller, he shall draw his warrant upon the treasurer of the state of New York for the sum of fifty thousand dollars, payable to the said owner or owners of said invention, device, his or their attorney, out of any money in the treasury not otherwise appropriated, in case but one certificate shall have been granted by said commissioners. If two certificates shall have been granted and no more, then the said comptroller shall draw his said warrant upon the said treasurer for the sum of thirty-five thousand dollars, payable to the owner or owners of certificate No. one; and said comptroller shall also draw his said warrant upon the said treasurer for the sum of fifteen thousand dollars, payable to the owner or owners of certificate No. two. If three certificates shall be granted by said commissioners, then and in that case the said comptroller shall draw his said warrant upon the said treasurer for the sum of thirty thousand dollars, payable to the owner or owners of certificate No. one; and one of fifteen thousand dollars, payable to the owner or owners of certificate No. two; and one of five thousand dollars, payable to the owner or owners of certificate No. three.

§ 843. (*Same ch.*, § 7.) If on or before the first day of November, eighteen hundred and seventy-three, the commissioners hereinbefore named shall, upon due examination, find and determine that the said invention or device has been successfully operated upon the canals, and has been or will be largely adopted as a motor on said canals by reason of its superiority over any other known method of propulsion, then and in such case they shall grant a further certificate of that fact, and the comptroller, upon its presentation to him, shall draw his warrant upon the treasurer of the state for the further sum of fifty thousand dollars, payable to the said owner or owners of the said device, his or their attorney, out of any money in the treasury not otherwise appropriated; but in case of the granting by said commissioners of more than one certificate, as stated in section six of this act, then and in that case the sum of fifty thousand dollars, mentioned in this section, shall be divided among and paid to the owners of the said certificates in the proportion, and in the manner as stated in section six of this act.

Payment  
of further  
certifi-  
cates  
when  
granted.

Powers of  
commissioners  
continued  
for one  
year.

§ 844. (1873, *ch.* 480, § 1.) Chapter eight hundred and sixty-eight of the laws of eighteen hundred and seventy-one, entitled "An act to foster and develop the internal commerce of the state, by inviting and rewarding the practical and profitable introduction upon the canals of steam, caloric, electricity, or any motor other than animal power, for the propulsion of boats," is hereby amended so as to continue the powers of the commissioners appointed therein one year beyond the time limited by sections one and seven of said act.<sup>1</sup>

## [ARTICLE X.]

### OF THE STATE ENGINEER AND SURVEYOR, THE DIVISION, RESIDENT, AND ASSISTANT ENGINEERS AND THEIR DUTIES.

#### SECTION 850. State engineer and surveyor; term of office.

- 851. To collect and preserve maps, plans, surveys, etc.
- 852. Maps, etc., to be subject to public inspection.
- 853. Office, where to be kept.
- 854. Powers and duties.
- 855. To have supervision of the engineer department.
- 856. Duties of division, resident and assistant engineers.
- 857. Fraud or misconduct by, how investigated.
- 858. Salary of state engineer and surveyor; travel fees.
- 859. May employ clerks, their compensation.
- 860. To visit and inspect all the canals and make suggestions for their improvement and maintenance.
- 861. To cause maps, plans, etc., to be made before location, with his opinion thereon.
- 862. Division engineers to frequently pass over and inspect the canals, and make suggestions to officers in charge.
- 863. Division engineers to make maps, plans, etc., to be submitted to the canal board.
- 864. Division engineers to make estimates, etc., before the letting of contracts.
- 865. Duties of resident engineers.
- 866. Duties of assistant engineers.
- 867. Resident and assistant engineers to be under supervision of division engineer.
- 868. Removal of engineers, how made.
- 869. Suspension of engineers, how made.
- 870. Annual report of state engineer and surveyor.
- 871. Certain laws and parts of laws repealed.
- 872. Penalty for making false estimates.
- 873. Deputy state engineer and surveyor, his powers and duties.
- 874. Contracts for enlargement to be closed September 1st, 1862.

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<sup>1</sup> By concurrent resolution, 1872, May 8th, this commission was directed to examine and report upon the plans of a submerged cable, etc., known as the European or Belgian system.

- 875. Plans for enlargement not to be changed.
- 876. No more than one division and resident engineer to be employed on each division; appointment and compensation; state engineer and surveyor to prescribe duties.
- 877. Temporary assistance may be employed; statement of to be filed; engineers to give bond; advances to engineers.
- 878. Duties of engineers. Compensation and expenses, how paid.
- 879. Rank of engineers.
- 880. Resident engineer Chenango extension.
- 881. Duties.
- 882. To give bond.

## OF THE STATE ENGINEER AND SURVEYOR.

§ 850. (*Const., Art. V., § 2.*) A state engineer and surveyor shall be chosen at a general election, and shall hold his office two years, but no person shall be elected to said office who is not a practical engineer. Term of office.

§ 851. (1840, *ch. 259, § 1, modified 1848, ch. 72.*) The [state engineer and surveyor] is hereby authorized and required to collect and preserve all maps, plans, drawings, levels and surveys of every description made and to be made for the use of the state. To preserve maps, plans, etc.

§ 852. (1842, *ch. 120, § 2.*) The maps, drawings and other documents deposited as herein provided, shall be subject to the inspection of the public officers and citizens of this state, at all reasonable hours, but shall not be removed or taken away from the office. Subject to inspection.

§ 853. (1848, *ch. 72, § 1.*) The office of the state engineer and surveyor shall be kept in the new state hall, and the trustees thereof shall assign a suitable room or rooms therein for his use.<sup>1</sup> Offices.

§ 854. (*Same ch., § 2.*) The state engineer and surveyor shall possess all the powers, and discharge all the duties prescribed or required by law to be discharged by the surveyor-general prior to the first day of January, eighteen hundred and forty-eight, except his powers and duties as a commissioner of the canal fund. Powers and duties.

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<sup>1</sup> Laws of 1840, ch. 295, provides that the trustees of the new state hall, shall assign apartments therein to the secretary of state, comptroller, treasurer, attorney-general, the canal board and the canal commissioners.

Super-  
vision of  
engineer  
depart-  
ment.

§ 855. (*Same ch.*, § 3.) The state engineer and surveyor shall have the general supervision of the engineer department, and shall perform all such duties in relation to the canals, as shall be required by the canal board, and shall visit and inspect the public works of this state as often as in his judgment it shall be necessary.

Duties of  
engi-  
neers.

§ 856. (*Same ch.*, § 6; *modified* 1865, *ch.* 477.) Whenever any division, resident or assistant engineer shall be required by the canal board or the canal commissioners, or the acting commissioner on his division of the canals, to perform any service in the line of his duty, he shall perform the same under the supervision of the state engineer and surveyor, \* \* \* .<sup>1</sup>

Frauds to  
be investi-  
gated.

§ 857. (*Same ch.*, § 8; *amended* 1848, *ch.* 162, § 11.) Whenever the state engineer and surveyor, or either of the canal commissioners shall suspect any fraud or misconduct on the part of any engineer or assistant, in relation to the public works, it shall be his duty to report the same to the canal board, who may employ so many and such agents and engineers as they deem proper, to aid them in the investigation of the matter, and draw on the [treasurer on warrant of the auditor] for their compensation, and the expenses of such investigation.

Salary and  
travel fees  
of state  
engineer  
and sur-  
veyor.

§ 858. (*Same ch.*, § 11.) There [*shall*] be allowed and paid to the state engineer and surveyor an annual salary of two thousand five hundred dollars, to be paid out of the canal fund quarterly, to commence on the first day of January, 1848, besides travel fees at the same rate as those allowed each of the canal commissioners, but such travel fees shall not exceed two hundred dollars in any one year.<sup>2</sup>

May em-  
ploy  
clerks.

§ 859. (1848, *ch.* 381, § 1.) \* \* \* The state engineer and surveyor, may until it is otherwise provided by law, from time to time, employ one or more clerks in his office in like manner as other state officers, and as respects the business of their respective offices, authorized to do, the compensation of which clerks shall not in the whole exceed the sum of one thousand five hundred dollars, and shall be payable each quarter of a year in ratable parts. \* \* \*

<sup>1</sup> See § 293, *ante*.

<sup>2</sup> The word "shall" omitted in statute as printed.

§ 860. (1850, *ch.* 377, § 5.) The state engineer and surveyor shall visit and carefully inspect all the canals of this state, at least once in each year, and shall make such additional visits and examinations of the whole or any portion thereof, and shall communicate to the canal board and to the canal commissioners such information and suggestions, from time to time, in relation to the improvement and maintenance of the canals, as he may deem the public interests to require.

State engineer to visit all the canals.

§ 861. (*Same ch.*, § 6.) Before any line for the enlargement of the Erie canal, the construction or the improvement of any lateral canal or any sections thereof, not already under contract, shall be finally located, the state engineer and surveyor shall cause such surveys, maps, plans, specifications and estimates of the expense of constructing the prism and banks of the canal, and of the mechanical structures required to be built thereon; or shall in his discretion revise such maps, specifications, and estimates of surveys previously made, as will render it practicable readily to determine the line of canal, and the plan of constructing the same, and the kind and plan of the mechanical structures that should be adopted, and shall communicate the same to the canal board, with his opinion in relation thereto, in writing, together with his opinion as to the time when the public interest requires that the construction of such line or portion of the canal should be commenced, and the time when the same should be completed.

Surveys, maps, etc., to be made.

§ 862. (*Same ch.*, § 7.) It shall be the duty of each division engineer frequently to pass over and carefully inspect all the canals embraced in the division under his charge, and to examine, and if necessary review all surveys, maps, profiles, ad-measurements, plans, specifications and estimates made in reference thereto by any engineer employed on said division, and to see that the engineers and overseers of work employed thereon faithfully perform their duties. The division engineers shall make to the state engineer and surveyor and to the canal commissioner in special charge of the division, and to the superintendents of repairs, such suggestions in relation to repairs and the plan of making the same as will, in their opinion, most tend to a safe and economical maintenance of the navigation of the canals.

Duties of division engineer.

Duties of  
division  
engineers.

§ 863. (*Same ch.*, § 8.) The division engineer shall, under the direction of the state engineer and surveyor, make or cause to be made all surveys, maps, plans, specifications and estimates that may be necessary or required by the canal board or canal commissioners to determine the proper location of the line of the canal, or any portion thereof, on their respective divisions, or that may be necessary preparatory to placing any work under contract for construction, and shall transmit a copy thereof to the state engineer and surveyor, who shall upon a due inspection and revision submit the same to the canal board with his approval indorsed thereon, and on obtaining thereon their certificate of adoption, he shall file the same in his office.

Letting  
and con-  
structing  
work.

§ 864. (*Same ch.*, § 9.) Before any work shall be contracted for on any of the canals of this state, the division engineers shall ascertain or cause to be ascertained with all practicable accuracy the quantity of embankment, excavation, masonry and the quantity and quality of all materials to be used, and all other items of work to be placed under contract, a statement of which, together with maps, plans and specifications corresponding with those adopted by the canal board and on file in the office of the state engineer and surveyor, shall be publicly exhibited to persons proposing for the work to be let. The quantities so exhibited shall be used in determining the value of the propositions received, and after the contracts shall have been awarded, said statement of quantities, together with the maps, plans and specifications and all other papers relating to the work advertised, and which were exhibited as aforesaid, and are necessary to identify the plan and extent of the work so awarded, shall be filed in the office of the state engineer and surveyor, accompanied with the certificate of the division or resident engineer, stating the time and place they were so exhibited. No alteration shall be made in any map, plan or specification adopted by the canal board, and so exhibited, or the plan of any work under contract during its progress, except by the consent and approval of the commissioner and the division engineer, nor unless the description of such alteration and the approval thereof be reduced to writing and be signed by the parties making the same, and a copy thereof shall have been filed in the office of the state engineer and surveyor. Nothing in this section contained shall be construed to authorize any change of plan that shall increase the expense



of the work, or create any claims against the state for damages arising therefrom, unless a written statement setting forth the objects to be attained by such change and the expense thereof shall have been submitted to the canal board, and their assent at a meeting in which the state engineer and surveyor were present, shall have been obtained.

§ 865. (*Same ch.*, § 10.) It shall be the duty of the resident engineers under the immediate direction of the division engineers, respectively, to survey, lay out, measure and compute the quantities of all work ordered by the canal board or the canal commissioners to be surveyed for location, construction or other purposes, to assist the division engineer so far as may be necessary in making maps, plans, specifications and estimates, to see that the work done on the several subdivisions is well and faithfully performed by the contractors, and in all respects strictly according to the terms of the contracts, and on the completion of the same they shall accurately ascertain the quantity of the several items of work done and the amount at the contract prices, and shall present to the canal commissioner or the division engineer a final statement thereof in such form duly verified as shall be prescribed by the auditor of the canal department; each resident engineer shall enter or cause to be entered in a book which shall be furnished for that purpose by the state engineer and surveyor, all of the field notes and computations of the items of work done on the subdivision under his charge, with such recapitulations, diagrams and other illustrations as may be necessary to render the same intelligible, together with a statement of the total quantity of each item of work done and the amount thereof at the contract price, and the aggregate amount at contract prices of the work done by each contractor, which entry shall be made in due form and properly certified by the several engineers who may have made it within three months from the time the final statement mentioned in this section shall have been prepared, and the book or books containing such entries shall within one hundred days after the completion of the work on each subdivision, be properly indexed and filed in the office of the state engineer and surveyor. The resident engineers shall severally perform such other services in the line of their duties as shall from time to time be required by the state engineer and surveyor, or the division engineer in charge of the subdivision on

Duties of  
resident  
engineers

which they may be located, and in case of the absence or inability of the division engineers to act, the resident engineer shall discharge the duties of such division engineer so far as relates to the subdivision assigned to said resident engineer.

\* Duties of assistants.

§ 866. (*Same ch.*, § 11.) It shall be the duty of the first assistant engineer, when directed by the resident or division engineer, to lay out and accurately measure and compute the quantities of the several items of work done or to be done, in constructing the public work within the limits severally assigned to them, to see that the work is, on the part of the contractors and others connected therewith, faithfully performed, and in all other respects to aid and assist the resident engineer, in the discharge of his duties as prescribed in the preceding section of this act, and to perform such other service in the line of his duties as the resident or division engineer may from time to time require.

Duties of resident engineers.

§ 867. (*Same ch.*, § 12; *modified 1865, ch. 477.*) Whenever any resident or first assistant engineer, shall by the canal commissioner in special charge of the division upon which they may be located, be required to perform any service in the line of their duty other than is in this act contained, they shall severally perform the same under the supervision of the division engineer. \* \* \*

Removal of engineers.

§ 868. (*Same ch.*, § 13.) The canal commissioner in special charge of a division shall have power, with the concurrence of the state engineer and surveyor, to remove for cause any engineer employed on such division.

Suspension of engineers.

§ 869. (*Same ch.*, § 14.) The canal commissioner in special charge of a division shall have power, with the concurrence of the state engineer and surveyor, to suspend any engineer on such division for misconduct or neglect of duty, and to appoint another to discharge the duties during such suspension. The state engineer and surveyor or commissioner who with the concurrence aforesaid shall suspend any engineer, as aforesaid, shall forthwith report the same to the canal board, with his reasons therefor, and serve a copy of such report on the engineer so suspended. The canal board shall hear the proofs and allegations of the parties, and discharge or retain such engineer as they may deem right.

§ 870. (*Same ch.*, § 15.) The state engineer and surveyor shall annually report to the legislature, within twenty days after the commencement of its session, the number and compensation of the engineers employed, and that may have been employed during the preceding year, on the public works of this state, designating the number employed on each resident's subdivision, and the length and estimated cost of the work under contract, the amount done and remaining to be done at the contract prices, on said subdivisions respectively. Said report shall also contain such other information in relation to his proceedings under this act, and such suggestions in the line of his duty in relation thereto as he may deem the public interest to require.<sup>1</sup> Annual report.

§ 871. (*Same ch.*, § 16.) So much of all laws and parts of laws as conflict with the provisions of this act, or authorize the appointment or employment of any of the officers or persons whose appointment is hereinbefore provided for, in any other manner than according to the provisions of this act, are hereby repealed. Repealing.

§ 872. (1854, *ch.* 329, § 12.) Any engineer or other officer or person in the employ of the state, who shall knowingly make any false representation or estimate of the nature, quality, quantity or cost of any work proposed by the state or any individual to be done, or of any materials so proposed to be furnished for any canal or its appurtenances, or any false representation or estimate in any statement of work or materials so proposed, which may be required by the canal board, any canal commissioner or any other board or officer, or who shall knowingly report or certify to any false statement of the amount of any work done, or purporting to have been done for the state, or of the quality or nature of such work, or of the quality or quantity of any materials furnished or purporting to have been furnished to the state, by which any person may be enabled to claim or receive a greater allowance than is justly due, shall be deemed guilty of a misdemeanor, and on conviction shall be imprisoned in the state prison for not more than five years, or in a county jail or penitentiary not more than two years, and shall be fined not exceeding one thousand dollars. False estimates.  
Penalty.

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<sup>1</sup> See *ante*, § 322.

Deputy  
state engi-  
neer.

§ 873. (1857, *ch.* 633, § 3.) The state engineer and surveyor is hereby authorized to appoint a deputy, who may perform any of the duties of state engineer and surveyor, except as commissioner, trustee, or member of any board, and who shall receive for his services a salary at the rate of two thousand dollars per annum.

All en-  
largement  
contracts  
to be  
closed.

§ 874. (1862, *ch.* 169, § 1.) All contracts for the enlargement and completion of the canals of this state, as contemplated by section three of article seven of the constitution, and not hereinafter provided for, shall be executed and performed in accordance with the plans, maps and specifications heretofore prescribed and adopted, on or before the first day of September next after the passage of this act, and the accounts for the said enlargement and completion shall be closed as soon thereafter as may be, and no more work shall thereafter be done, or materials procured, under pretense of enlarging and completing said canals, and the same shall be deemed and considered finished and completed, and from that time all the powers and authority of the contracting board in relation to the enlargement, completion and construction of such canals shall cease.

Plan of  
enlarge-  
ment not  
to be  
changed.

§ 875. (*Same ch.*, § 2.) After the passage of this act the canal board shall not have power to change the plan of finishing and completing the work of enlarging and completing said canals as heretofore fixed and determined by the resolutions of said board; nor shall the said board have the power to change the plan of construction of a completed canal, its banks, locks, waste-weirs, culverts, bridges, or any other structure or matter or thing connected therewith, except to allow and certify to such works of extraordinary repairs and improvements in a completed canal as is contemplated by the existing statutes of the state.

Engineer  
depart-  
ment.

§ 876. (*Same ch.*, § 3; *amended* 1865, *ch.* 477, § 1.) Hereafter no more than one division engineer and an resident engineer shall be employed upon each division of the said canals. The said division engineer and resident engineer shall be appointed by the canal board, and they shall be practical engineers, and have the certificate of the state engineer as to fitness, capacity and integrity; and the said board shall fix the compensation of such engineers. The state engineer and sur-

veyor shall prescribe and define the duties of the engineers so appointed, and shall assign each division engineer and resident engineer to a division of the canal corresponding with the division of each of the canal commissioners. The first, second, third and fourth sections of the act entitled "An act prescribing the powers and duties of the state engineer and surveyor, and of the engineers employed on the public works," passed April tenth, eighteen hundred and fifty, are hereby repealed.

§ 877. (*Same ch.*, § 4; amended 1865, *ch.* 477, § 2.) In case it may be necessary to employ, temporarily, additional assistance to aid the engineers in the performance of some specific job of work or duty, the same may be done by the division engineer in charge where the work is to be performed, with the assent of the state engineer and surveyor and the commissioner in charge of the division where the work is to be performed; and the said state engineer and surveyor and canal commissioner shall file a statement in the canal department, containing the names of the persons to be employed, the nature of their duties, severally, and the daily compensation to be paid to each, and the periods during which such employment is to continue. And every engineer appointed by the canal board under this act, shall, before entering upon the duties of his office, file in the canal department his bond, duly executed to the people of the state, in such sum and with such surety for the faithful discharge of his duties as the auditor shall approve, and shall take and subscribe the constitutional oath of office, which oath shall be filed in the office of the secretary of state. No money shall be advanced to any engineer on account of services rendered, nor shall any account of moneys disbursed by him be audited, until the provisions of this section shall have been fully complied with.

To employ  
assistance  
temporarily.

Statement  
of to be  
filed.

Bond.

§ 878. (*Same ch.*, § 5.) The services and duties performed by the said engineers shall be such as relate strictly to the repairs and maintenance of the completed canals of the state, and the compensation allowed and expenses incurred under the provisions of this act, shall be paid out of the appropriation for superintendence, collection and ordinary repairs of the canals.

Duties of.

Rank of  
engineers.

§ 879. (1865, *ch.* 477, § 3.) The engineers appointed by the canal board under the act hereby amended, shall hereafter rank as division and resident engineers, instead of engineers and assistant engineers; and it shall not be necessary for the board to re-appoint the present incumbents in order to confer said rank upon them.

Resident  
engineer,  
Chenango  
extension.

§ 880. (1866, *ch.* 794, § 1.) The canal board are authorized to appoint one resident engineer for the extension of the Chenango canal, and said board shall fix the compensation of the engineer so appointed.

Duties.

§ 881. (*Same ch.*, § 2.) The resident engineer appointed, under section one of this act, shall have the certificate of the state engineer and surveyor as to his fitness, capacity and integrity, and who also shall define the duties of the resident engineer so appointed.

Shall give  
bond.

§ 882. (*Same ch.*, § 3.) Before entering upon the duties of his office such engineer shall file in the canal department his bond, duly executed to the people of the state, in such sum and with such sureties for the faithful discharge of his duties as the auditor shall approve, and shall take and subscribe the constitutional oath of office, which shall be filed in the office of the secretary of state. No money shall be advanced to such resident engineer on account of services rendered, nor shall any money disbursed by him be audited, until the provisions of this section are fully complied with.

REGULATIONS  
OF THE  
ENGINEER DEPARTMENT  
OF THE  
CANALS  
OF THE  
STATE OF NEW YORK.

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In pursuance of the requirements of the laws now in force, and for the purpose of establishing a uniform practice among the engineers employed upon the public works of the state, and to give them information relative to the duties imposed upon them by the following acts, hereto annexed; and the following regulations are hereby established, which prescribe and define the duties of the engineers appointed by the canal board. All regulations heretofore adopted, and which may conflict with those herein established, are hereby rescinded.

VAN R. RICHMOND,  
*State Engineer and Surveyor.*

STATE ENGINEER AND SURVEYOR'S OFFICE,  
ALBANY, *January, 1870.*





# REGULATIONS.

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## DIVISION ENGINEERS.

*First.* The office of the eastern division to be at the state hall, in the city of Albany; of the middle division, at Syracuse; and of the western division, at Rochester.

*Second.* It shall be the duty of each division engineer to report in all cases to the state engineer and surveyor; to cause all orders and instructions from him to be carried into effect; to give from time to time such instructions to the resident engineer, or (in the absence of the resident) to the assistants on their respective divisions, as shall be needful for the due preservation, prosecution, economy and completion of any work constructing or repairing thereon; to report monthly the state of progress and the condition of all or any part of the public works under contract, showing the amount of work done, and from time to time such other information as shall be required by the state engineer and surveyor; to review all monthly and final accounts made on account of and for the settlement of contracts, and certify that the same are made up in accordance with the provisions of such contracts.

*Third.* Each division engineer shall prepare all the maps, plans, specifications, etc., for the work to be put under contract, from time to time, on his division.

All the maps and profiles to be transmitted by the division engineers to the state engineer and surveyor, for determining the location of any line of canal, shall be made on elephant size drawing paper, and on a scale of two chains to the inch horizontal, and twenty feet vertical, and shall have several fixed monuments indicated thereon, so that the line of canal may readily be determined at any subsequent time. The courses shall be written on the base line of the survey, and the distances on the transverse lines to be drawn at every angle in the outer boundaries of the land to be appropriated for the use of the canal; the whole distance from the beginning of each course to every transverse line connected with the same, must be given. The base lines of all surveys of the line of any canal, shall be the inner top angle of the towing path, and shall be indicated by a full red line on the map; the transverse lines at the end of each course, shall also be a full red line, and those intermediate shall be dotted red lines.

The boundaries of lands proposed to be permanently appropriated, shall be indicated by full blue lines, and their dis-

tances from the base line shall be written at every angle in said boundaries, at the ends of the transverse lines aforesaid.

The maps shall also show the general topography of the country on either side of the line, marking with especial care the beds of streams and ravines, and the lines of the several parcels of land having different owners, and the quantity proposed to be permanently appropriated to the use of the canal from the lands of each owner, must be designated, with the names of the owners, in tabular form, on the margin of the map. Said map must also show the location of all public and private roads, and all mechanical structures; the relative position of the old with the enlarged canal. All the buildings coming wholly or partly within the location of the boundaries aforesaid, and the sizes thereof, shall be accurately laid down. A tabular statement, showing the owners' names and the occupation of the buildings to be moved or taken, shall be made on the margin of the map.

The plan of the mechanical structures must show every part by plain and distinct representations; the dimensions of all the parts clearly indicated, and bills of materials, together with specifications of the manner of performing the work, must also accompany the plans.

The estimates must show, with all practicable accuracy, the quantity of the several kinds and qualities of work respectively proposed to be included in the sections and in the mechanical structures.

*Fourth.* The maps to be exhibited at each letting shall be made on a scale of eight chains to one inch horizontal, and forty feet vertical, and as uniform as the character of the work will admit; said maps shall show the location of streams and mechanical structures, lines of lots and buildings to be moved, and also the relative location of the old and new canals, when said lines approach each other nearer than one hundred feet.

The profile must show the depth of cutting and filling at each station, the location of test-pits and mechanical structures. All explanatory remarks necessary to be made to contractors relative to the work to be let shall be written out in full upon the profile, and no *verbal* explanation relative to the same shall be made, unless previously written out as aforesaid. The division engineers shall, prior to any letting, cause to be entered, in a book prepared for that purpose, the full quantities of each item of work proposed to be included in each section and mechanical structure to be put under contract. After the contracts are awarded, copies of the original surveys, maps, plans and specifications, with the blank contracts, and notices and estimates of quantities exhibited at any letting, shall be certified to and kept in the office of the division engineer.

*Fifth.* The division engineers shall report annually, on or before the fifteenth day of September of each year, the number and compensation of all persons employed in the engineer department during the preceding year, designating the number

temporarily employed on each division; and the length and estimated cost of the work under contract; the amount of work done in detail under each contract, and remaining to be done at contract prices, on said division; also the length and estimated cost of work not under contract.

*Sixth.* The division engineers, in making suggestions to the canal commissioners and superintendents of repairs, in relation to repairs and the plan of making the same, shall, if important, transmit such suggestions, with plans and specifications, to the state engineer and surveyor, for his decision, and as soon as such decision shall be made, send copies to the canal commissioner and superintendent in charge and also file copies of the same in the office of the state engineer and surveyor.

*Seventh.* The division engineer shall report to the state engineer and surveyor, any neglect of duty or impropriety of conduct which he may regard as hazardous to the business of, or disgraceful to the standing of, the department.

*Eighth.* The division engineers shall promptly report to the state engineer and surveyor at Albany, by the shortest mode of communication, the time, nature, and extent, of any break or other accident causing delay in navigation, that may occur upon the canals under their charge, and immediately after said break or other accident shall have been repaired, they shall report at length, and in writing, the probable cause of said break or other accident, together with the cost to the state or contractor for repairing the same.

*Ninth.* The division engineers shall promptly transmit to the state engineer and surveyor duplicate copies of the quarterly returns of the resident engineer, showing the name, designation, and time of service and compensation of each person temporarily employed under them, together with duplicate copies of all monthly estimates and final accounts of work done and materials furnished upon each residency upon their respective divisions, and shall transmit one copy of said monthly estimates and final accounts to the canal commissioner in charge of said division.

FORM FOR DIVISION ENGINEER'S CERTIFICATE TO ACCOMPANY A  
FINAL ACCOUNT, AS PRESCRIBED BY THE AUDITOR.

I CERTIFY that I have made a thorough personal examination of the work embraced in the foregoing final account for  
and that I believe the same has been fully completed, in conformity with the contract.

I further certify, that the said final account is made up at the prices specified in, and in accordance with the terms of, the contract.

[SIGNATURE.]

*Division Engineer.*

Dated at  
this day of , 18 . }  
41

## RESIDENT ENGINEERS.

*First Regulation.* The resident engineers shall report in all cases to the division engineers, or in their absence to the state engineer and surveyor, and shall furnish to them any information relative to the canals under their charge, which may from time to time be required; they shall see that all instructions relating to the canals under their charge, which may from time to time be given by the division engineers, are promptly and faithfully performed; they shall furnish true copies of the monthly and final estimates to the division engineers, for all work performed, on contracts or otherwise, under their direction respectively; they shall assist in the canvass of propositions; shall give instructions to the first and second assistant engineers, from time to time, as to the manner of carrying out plans of work under their immediate supervision; they shall inspect carefully all the work in progress on their respective subdivisions, as often as the due prosecution, security, permanency, and the faithful performance of the contracts on the part of the contractors, shall require; they shall examine, as far as practicable, the field notes and measurements made by their assistants, and the computations made therefrom, so as to be able to certify or make oath to the correctness thereof, to the best of their knowledge and belief.

*Second.* The resident engineers must, in all cases, give their instructions personally relative to any work or service to be performed by contractors, or through assistants temporarily employed.

*Third.* The resident engineers shall keep accurate accounts of the time of service of all the persons temporarily employed under them; and shall make quarterly returns thereof in triplicate to the division engineer, with the price per day and the amount of each person's account in dollars and cents. These accounts must show the number of days and kind of service performed, and the dates between which the first and last day's service was rendered, and also all other expenditures made by him.

## FORM OF FINAL ACCOUNT FOR SETTLEMENT OF A CONTRACT.

STATE OF NEW YORK, }  
*For the* Canal, }  
*To* *Dr.*  
 For materials furnished and labor performed under contract,  
 dated            day of            18    , to construct  
                  art, chap.            , laws

Quantities.	Contract price.	ITEMS.	Price used.	ITEMS.		TOTAL.	
				Dols.	Cts.	Dols.	Cts.

## RESIDENT ENGINEER'S AFFIDAVIT TO A FINAL ACCOUNT.

I,    resident engineer on that portion of  
 the    canal embracing the work comprised in the  
 contract of    for the construction of  
 on said canal, do solemnly swear that the same has been com-  
 pleted, and that all the work included in the foregoing account  
 has been performed according to the terms of the contract.

And I further swear that, to the best of my knowledge and  
 belief, all of the measurements and computations which I have  
 made in reference to said account are correct; and that I have  
 examined the measurements and computations of each one of  
 my assistants, as far as was practicable, and believe them to be  
 correct.

And I further swear that the material and work stated in  
 the foregoing account, were classified by myself, and strictly  
 according to the terms of the contract; also that the prices  
 charged in said account correspond with those contained in the  
 contract; and further, that I believe that the foregoing account  
 is in all respects a correct statement of all the work embraced  
 in said contract, and that it amounts to the sum of \$            .

And I further swear that the items of extra work stated in  
 the foregoing account were necessary, and have been performed,  
 and that the prices charged therefor are just and reasonable,  
 and that all of the extra work done by said contractors amounts  
 to \$            .

I also further swear that the foregoing account and all of the  
 measurements and computations relating thereto were made by  
 myself or by my assistants, and have been correctly transcribed  
 on page            of book            , of final measurements of the  
                  division.

Subscribed and sworn to before me, }  
                  this            day of            18    . }

*Resident Engineer.*

## REGULATIONS OF THE

Each resident engineer shall report monthly to the division engineer the estimates of work done under contract in the following form, to wit:

*Estimate of work done and materials delivered on the several contracts hereinafter named, on the subdivision of the division of the canal, up to day of , 18 .*

[Name of contract.]

[Name of contractor.]

[illegible]

I have examined the foregoing estimates made by the several assistant engineers under my charge, and believe that all the quantities therein mentioned do not exceed the amount of work actually performed on the respective contracts.

(Signed)

*Resident Engineer.*

Triplicate copies of monthly estimates and final accounts shall be sent to the division engineer.

Each monthly report shall also show the kind, character and quantity of incidental work done within the limits of each section, and not included in any contract.

If the superintendents of repairs are required by a canal commissioner, to perform work and furnish materials for the construction or enlargement of any canal, the resident engineer shall, from time to time, inspect the same, and furnish to the division engineer the quantities and cost of such work.

*Fourth.* Any line of canal to be measured, shall be staked in chain stations *four rods* apart, and numbered consecutively from the beginning to the end of each section going westward. Intermediate stations shall be taken as often as is necessary for an accurate measurement of quantities; the distance of such intermediates to be measured from the station preceding. Cross-section measurements are to be made at every station so fixed, and to be entered in a field book in diagram form, showing the cutting or filling required at each angle, in the form

of the prism and banks of the canal, and at intermediate points as often as accurate measurements require. The transverse distances between each level on every cross section shall be accurately and plainly entered on the base line of each diagram.

Similar methods shall be observed in keeping the field notes of the measurements of pit and side excavations, and embankments and structures of all kinds.

All field books shall be properly designated by a distinct title, and paged, and shall show the names of the individuals engaged in making the surveys and measurements, and the date and place of making the same. All such notes shall be carefully recorded in INK, at the time of making, or during the day on which they are taken.

All the field notes, computations and measurements thus made and recorded, shall be entered in the books furnished by the state engineer and surveyor, according to the 10th section of the act chapter 377, of 1850. The "diagrams and other illustrations" shall be entered on a regular scale. The quantities of the items of work shall be entered in separate columns on the right side of the diagrams, and reference shall be made to the title and page of the field book containing the original notes in every case.

*Fifth.* Immediately after the "final statements," relative to any contract which is completed, or definitely suspended, is entered according to law in the above books, the several engineers who have made the same, shall "properly certify and subscribe their names thereto," giving date and place; and so on in successive order, as contracts are completed or suspended as aforesaid.

All the diagrams, quantities, estimates, etc., made for work under contract, on each respective subdivision, expiring simultaneously, shall be entered in the same book, which book shall be returned to the state engineer and surveyor immediately after the completion or suspension of said contracts.

The following shall be the method of surveying any line of canal:

The courses and distances shall be taken on the inner top angle of towing path as a base line; on curves, the bearing of every chain distance must be given. All the transverse measurements shall be made from the said base line, and the side observations shall include the general topography of the country for a convenient distance on either side of the canal. The distances, measured accurately on the base line, must be given to all streams, public and private roads, mechanical structures and buildings; also the precise distance on either side from the base line to all buildings within two hundred feet of the same.

*Sixth.* Whenever the resident engineer shall act as division engineer under the 10th section of the act chapter 377, of 1850, he shall be governed by the regulations prescribed for the division engineer, and in subscribing his name to official docu-

ments, shall style himself "*acting division engineer for subdivision.*"

*Seventh.* The resident engineer shall have the immediate charge, under the direction of the division engineer, of all persons temporarily employed to make surveys, measurements and inspection of work on the line of canal within the limits assigned to him; and shall keep, or cause to be kept, the time each person is employed, and the nature of service rendered, and shall furnish in writing a correct monthly account of the same to the division engineer. He shall also keep, or cause to be kept, an account of the operative force daily employed on each contract, distinguishing the several kinds of labor and the wages paid, and report the same monthly, in such tabular form as the division engineer shall prescribe.

The resident engineers shall be especially careful to see that the field work and records are carefully and accurately kept, and that the requirements contained in the foregoing regulations are strictly observed, and shall report to the division engineer any cases of impropriety of conduct or neglect of duty in persons employed upon that portion of the canals duly assigned him by the state engineer and surveyor.

**AFFIDAVIT OF RESIDENT ENGINEER, TO ACCOMPANY CONTRACTOR'S RECEIPT FOR A PARTIAL PAYMENT.**

STATE OF NEW YORK, } ss.:  
COUNTY OF

, engineer on that portion of the  
canals embracing the contract of to  
construct on the  
canal, being duly sworn, saith: That he has actually measured  
the materials delivered and the labor performed under the said  
contract, since the day of , 186 ,  
the time of the last estimate, and up to the day of  
186 , and has estimated the prices thereof with reference to the  
prices contained in the contract, and that the whole amount of  
the labor performed and materials delivered between the dates  
aforesaid, according to such estimate, amount to the sum of  
dollars, and does not include any of  
the work done or materials furnished which are included in  
any former estimate. Also, that a statement of all the items  
of work done thereon, estimated value and amounts, together  
with the location, character and description of each, have been  
entered on page of book of monthly estimates of the  
division. That the estimates for work  
done previous to the said day of , 186  
as per former estimate, to ..... \$  
Amount paid (15 per cent, \$ retained). \$



Work done as per estimate..... \$  
 Amount to be paid (15 per cent, \$ retained) \$

Total amount of work done and materials  
 furnished ..... \$

Amount paid and to be paid (15 per cent,  
 \$ deducted)..... \$

And which amount he believes does not exceed the actual  
 quantities and value of the whole amount of the materials  
 delivered and labor performed by the aforesaid contractors.

Subscribed and sworn before me, }  
 this day of , 187 . }

#### ASSISTANT ENGINEER'S AFFIDAVIT TO A FINAL ACCOUNT.

I, assistant to , who has sub-  
 scribed the preceding affidavit, do solemnly swear, that I have  
 assisted in making the measurements and computations for the  
 final estimate to which this affidavit is attached, and that to  
 the best of my knowledge and belief, all the measurements and  
 computations, which have been made in reference to the pre-  
 ceding account, are correct, and have been correctly transcribed  
 in the book mentioned in said affidavit; and I further swear,  
 that I have examined the preceding account of materials fur-  
 nished and labor performed, and that I believe it contains a  
 correct statement of the same, and of all measurements and  
 computations relating thereto, which have been made in refer-  
 ence to said contract.

Subscribed and sworn to before me, }  
 this day of , 187 . }

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RULES AND ORDERS  
OF THE  
CANAL BOARD  
OF THE  
STATE OF NEW YORK,

Adopted March 1, 1854.

Revised May 4, 1866.

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1. The lieutenant-governor shall preside at all the meetings of the board when present; and, in his absence, such member as shall be selected by him or those present.

2. When the hour for meeting shall have arrived, the lieutenant-governor, or, in his absence, such other member of the board as may be selected, having taken the chair, the business before the board shall be transacted in the following order:

1. Reading and approving minutes of last meeting.
2. Presentation of petitions.
3. Reports of committees.
4. Motions and resolutions.
5. Unfinished business.
6. Special orders.
7. Appeals from awards of canal appraisers.
8. Cases in which the board has original jurisdiction.

But messages and communications from the senate, assembly, or any state officer, may be received and acted on at any time.

3. Claimants need not appear before the board by counsel; but if counsel are employed, they are required to indorse their names upon the papers in the case.

4. All motions will be heard on affidavit, or on a petition, duly verified, setting forth the facts in the case, unless the same shall appear by the papers or books in the canal department; in which case it shall contain a reference to said books or papers, and also setting forth the ground on which the action of the board is asked.

5. Upon all petitions and affidavits, presented by members of the board, shall be indorsed the name of the member presenting the same. And all resolutions shall be reduced to writing before being offered, and the name of the member offering the same written thereon.

6. All committees shall be appointed by the chair, unless otherwise ordered by the board. The reports of all committees shall be in writing.

7. The secretary of the board shall at all times keep a calendar of all cases pending before the board, and the same shall be entered thereon in the order in which the papers are filed.

8. The question on the final disposition of all matters involving the expenditure of money shall be taken by ayes and noes, and the same shall be entered on the minutes. And in all other cases, any member shall have the right to demand the ayes and noes, and the same shall be entered.

9. No question, involving the expenditure of money, shall be passed but by the vote of at least five members of the board.

10. If the question in debate contain distinct propositions, the same shall be divided by the chair, at the request of any member.

11. On application for the remission of a penalty, the petition or affidavit must set forth whether the penalty has been paid, and if so, to whom; and must also be accompanied with proof, by affidavit, that copies of the petition and accompanying papers have been served on the collector or other officer who imposed the penalty.<sup>1</sup>

12. It shall be the duty of such officer, on being served with such papers, forthwith to make return to this board of all the facts within his knowledge or belief having any relation to the claim.

13. The petitioner is required to indorse his address on the back of his application; and it shall be the duty of the secretary of this board to advise him of the decision of the board.

14. Every appeal must be made in writing, stating briefly the grounds on which it is made; and it must be made, and the proper papers and copies served, within three months from the time a transcript of the decision of the canal appraisers is filed in the clerk's office of the county, as required by law.

15. If such appeal be made by the canal commissioners, one copy thereof is to be served on the canal appraisers, and another on the party claiming damages, his guardian or agent, either personally or by leaving the same at his usual place of abode with some person of mature age.<sup>2</sup>

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<sup>1</sup> By the act, chap. 534, Laws of 1855, § 5, this application must be made within sixty days after the imposition of the penalty, which must have been illegally imposed. See Laws, *ante*, § 527.

<sup>2</sup> Laws of 1870, ch. 768, § 2. " \* \* \* In any appeal by the canal commissioners, on the part of the state, from a decision or award made by the canal appraisers, the notice of appeal may be signed by one or more of such commissioners, and the signatures of all shall not be required."

16. If such appeal be made by the party claiming damages, one copy thereof is to be served on the appraisers or one of them, and another on the canal commissioners. The service on the canal commissioners may be made by delivering the said copies to the acting canal commissioner on the canal or section of the canal where the damages claimed were sustained, or by sending the same, by mail, to his place of residence. Proof of such service, or an admission by the commissioner, will be required.

17. Whenever, before or after an appeal from the award of the canal appraisers, before a hearing by this board, a claimant shall receive the damages awarded to him by the appraisers, he will be deemed, thereby, to waive his appeal, and the same will be dismissed by this board accordingly.

18. The receipt of damages awarded by this board, whether on appeal or otherwise, shall be deemed a waiver of a rehearing, and the same will be denied accordingly.

19. Damages will not be awarded to a claimant for lands or waters appropriated, unless a perfect title to such lands or waters, as the case may be, is shown by the claimant.

20. All *claims* and all *appeals* must be in the name of the *actual owner* of the lands or property injured; and no assignment of any *claim* for damages will be recognized. This regulation will not prevent any person appealing or claiming by a regular agent duly appointed.

21. Claims must cover all damages, present and prospective; and no reservation of prospective damages will entitle the party to present a new claim after the limitation provided by law has expired.

22. If, upon the coming in of any return by the canal appraisers to any appeal made from their decision, any claimant shall allege that there are any omissions of any testimony produced before them, he may, by affidavit, show the existence of such omissions; and the board will, in their discretion, order an amendment of the return, or a further return.

(23. The board will not, in any case, order a rehearing before the canal appraisers, in the nature of a new trial.)<sup>1</sup>

24. When the party sustaining damages has died since the act complained of was done, claims and appeals respecting them should be presented by administrators or executors of such party, when the damages sustained would have been the subject of an action at law, in the name of such administrator or executor, if it had been occasioned by an individual; and in all other cases, by the person or persons to whom the interest in the land appropriated would have belonged but for such appropriation.

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<sup>1</sup> In view of the provisions of § 6 of chap. 836, Laws of 1866, this rule was abrogated by the canal board, May 4, 1866, by the adoption of the report of the committee of revision of rules and orders. For law of 1866, see § 471, *ante*.

25. Whenever claims for damages are required to be signed by a guardian, the same must be signed by the general guardian appointed by the surrogate.

26. The secretary shall, immediately after the adoption of this rule, and hereafter, at least one and not more than three weeks before the annual session, prepare from the general calendar a business calendar, to contain only the appeals, applications for rehearing, and original cases on the calendar for argument or hearing in the order in which they are entitled to be heard, placing appeals from canal appraisers first in order; and have copies of such calendar printed for the use of the board, counsel and claimants.

27. At the annual session of the board, during the meeting of the legislature, and at such other sessions as may be specially called, after public notice, for the purpose of hearing calendar cases, the business calendar will be taken up, and cases thereon called up for argument or hearing, in the order in which they stand upon the calendar. But no more than ten causes will be so called in one day. After the number of cases shall have been called and disposed of, or passed, on any day, the board will take up such other cases as may be ready for hearing or argument, and may be moved by the parties or their counsel, giving preference to such cases in the order in which they stand upon the calendar.

28. All cases which are called and passed, under the provisions of the last preceding rule, and are not brought up for argument during the term, no good cause being shown or appearing by affidavit why the same were not brought on to be argued or heard, shall, during the last week of the session, be taken up and decided without argument or hearing.

29. The secretary shall from day to day furnish to such paper or papers, in the city of Albany, as request the same, copies of proceedings of the canal board for publication, together with the numbers of the ten causes on the calendar which will be in order to be called on the next day.

30. In the payment of awards by this board hereafter, no draft upon the auditor will be given by any of the canal commissioners; but application for the payment of the same must be made directly to the auditor. And no award will be paid until the expiration of sixty days after date of award.

31. That the auditor be and is hereby authorized to cause in future, the "proceedings of the canal board" to be printed on "slips," and that he furnish each member of this board with six copies of such slips as soon after each meeting as practicable.<sup>1</sup>

32. When questions shall be taken by ayes and noes, the members present but not voting shall appear on the minutes.<sup>2</sup>

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<sup>1</sup> Adopted December 14, 1865.

<sup>2</sup> Adopted March 27, 1872.

# CANAL REGULATIONS

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REGULATIONS ON ALL THE NAVIGABLE CANALS OF  
THIS STATE, ESTABLISHED BY THE

## CANAL BOARD,

APRIL, 1863,

WITH THE ADDITIONS AND AMENDMENTS THERETO  
UP TO AUGUST, 1873.

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### 1st. Relative to the Weighing and Inspecting of Boats and their Cargoes.

REGULATION No. 1. No boat shall be cleared from a place where there is a weigh-lock without having the weight or quantity of its cargo ascertained, either by weighing, measuring or counting; and every boat which shall be cleared from a collector's office, where there is no weigh-lock, shall be stopped and weighed at the first weigh-lock at which it arrives after its clearance. Every canal boat which shall enter the canal from the Hudson river shall produce an acknowledgment from the collector where it entered the river, if at a different place, that the down cargo is settled, or a clearance must in all cases be refused.

Boats not  
to be  
cleared  
till cargo  
is ascer-  
tained.

No boat or other float shall clear to a point intermediate between two collectors' offices, unless that point is known to be the final destination of the boat or float for which the clearance is required, or unless the collector is satisfied that the boat or float is to leave the canal at the point cleared to. This regulation does not prohibit collectors from clearing boats or other floats from one collector's office to another, when the masters desire to do so. Every master of a boat or person having charge of a float, who shall make any false representation, whereby a clearance shall be obtained in violation of this regulation, shall be subject to a penalty of *ten* dollars.

The "just and true account or bill of lading" of the property on board of every freight boat, which is required to be delivered to every collector of whom a clearance is demanded,

Bill of  
lading,  
how  
signed.





or more than three feet ten inches going north, shall be cleared by any collector on the Champlain canal (with power to the commissioner in charge to increase the draft of boats going south to four feet six inches whenever he deems such increase advisable); and no boat drawing more than four feet of water shall be cleared by any collector on the Chemung canal and feeder (when moving north); and no boat drawing more than three feet and six inches of water shall be cleared by any collector on the Chemung canal and feeder (when moving south), the Crooked Lake canal, Chenango canal, Genessee Valley canal, Black river canal, Oneida river improvement, and the Oneida Lake canal and feeder; and that it shall be the duty of every collector, superintendent, inspector and weigh-master, to cause every boat found violating the regulation on this subject, to be so far unloaded as to bring her within the prescribed limits; and in every case where a boat is so unloaded, the fact shall be entered on her clearance, with a statement of the portion of her cargo taken off; and in every case where a boat shall be found drawing more water than six feet, five feet and two inches, four feet and six inches, four feet and four inches, three feet and ten inches, and three feet and six inches, as provided in this regulation, or as may be prescribed by the commissioner in charge in the cases above named, her master or owner shall be subject to a penalty of twenty-five dollars to be imposed and collected by any and every collector, superintendent, inspector, and weigh-master, who may at different times and places detect such overdraft, and every collector shall enter upon the clearance the draft of water of every boat at the time of such clearance.<sup>1</sup>

### HEIGHT OF BOATS

ALLOWED ON THE ERIE, OSWEGO, AND THE CAYUGA AND SENECA CANALS.

No boat or other craft whose height or distance from the water line of such boat or craft to the top thereof shall exceed eleven feet and three inches; and no loaded boat or other craft whose cargo, or any part thereof, is so arranged or placed on such boat or craft so that the top or extreme height of the same shall exceed eleven feet and three inches from the water line of such laden boat or craft: and no steamboat, tug or other craft propelled by steam, whose height when the top of the deck, machinery, fixtures, or other apparatus shall exceed eleven feet and three inches, shall be allowed or permitted to navigate the Erie, Oswego and Cayuga and Seneca canals.

#### HEIGHT OF BOATS ALLOWED ON THE OTHER CANALS.

No boat or other craft whose height or distance from the water line of such boat or craft to the top thereof shall exceed nine feet; and no loaded boat or other craft whose cargo, or any part thereof, is so arranged or placed on such boat or craft

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<sup>1</sup> See note on next page.

so that the top or extreme height of the same shall exceed nine feet from the water line of such laden boat or craft, and no steamboat, tug, or other craft propelled by steam, whose height when the top of the deck, machinery, fixtures, or other apparatus shall exceed nine feet, shall be allowed or permitted to navigate the Champlain, the Chemung canal and feeder, the Crooked Lake canal, the Chenango, the Genessee Valley, and the Black river canals, the Oneida river improvement, and the Oneida lake canal and feeder.'

Owners,  
masters,  
etc., when  
to stop  
and ex-  
hibit their  
clear-  
ances.

REG. No. 3. Owners, masters or navigators of boats or rafts, passing on any of the canals, are required to stop with their boats or rafts at every collector's, weigh-master's and inspector's office, and exhibit their clearance or bill of lading; and on arriving at the place of destination, to report such arrival to the collector, weigh-master and inspector (should such place contain such officers, or either of them), before any part of the cargo is unloaded; and no boat or raft shall depart from any place where a collector's office is situated without obtaining a clearance or permit; *except that lumber coming from the foot of the feeder-dam, across the Chemung river, may be cleared either at Horseheads or Corning, paying toll in either case on two miles, for the navigation above the dam.* And all other points, excepting the city of Rochester, within one mile of the collector's office, shall be deemed to be at the place of such collector's office, and the mouth of the outlet of the Seneca lake shall be deemed to be at Geneva, and Black Rock shall be deemed to be at Buffalo; and all points within the corporate limits of

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'The original Regulation No. 2 prohibited the clearing of boats drawing, on the Erie, Oswego, and Cayuga and Seneca canals, more than five feet and nine inches of water; on the Champlain canal, for the smaller class of boats, four feet, and the larger three feet and nine inches; on the Chemung (moving north), and the Crooked Lake canals, four feet; and on the Chemung (moving south) and the other canals of this state, three feet and nine inches.

By amendments of April 5th and May 12th, 1864, the draft of boats on the Erie, Oswego, and Cayuga and Seneca canals was increased to six feet, on the Chemung (moving north) and the Crooked Lake canals reduced to three feet nine inches, and the provision relating to the "height of boats on the other canals" was added. By resolutions of June 14th and July 8, 1864, the draft of boats on the Chemung canal (moving north) and on the Crooked Lake (moving north) was restored to four feet, but May 9, 1865, the draft of boats on the Crooked Lake canal was reduced to three feet and six inches.

On the Champlain canal the resolution of June 17, 1868, allowed boats going south to draw four feet, and those going north three feet and nine inches of water. By resolution May 3, 1870, boats going south on Champlain canal were allowed to draw four feet four inches of water, and going north three feet ten inches, and the commissioner in charge was authorized thereafter to allow an increase of depth of water to boats going south to four feet six inches whenever he shall deem such increase advisable.

August 5, 1871, in consequence of low water in Seneca lake, the draft of boats on that part of the Cayuga and Seneca canal extending from Waterloo to Seneca lake was reduced to five feet and nine inches, and Nov. 23d to five feet. May 29, 1872, it was again reduced to four feet nine inches. June 19, 1872, the draft of boats was limited to five feet and two inches, and the commissioner in charge authorized to increase the said draft to such extent from time to time as the condition of the water in the lake and river would permit, until the further order of the canal board.

the city of Rochester, whether the distance from the collector's office exceeds one mile or not, shall be deemed to be at the place of such collector's office, either for taking out or depositing a clearance; and for every violation of this regulation the owner, master or navigator of such boat or raft shall be liable to a fine of twenty-five dollars.

A boat or float whose clearance is lost, or is claimed to be lost, must be detained until it re-clear and pay the toll for the whole voyage; or produce a duplicate clearance from the office where its first clearance is claimed to have been issued.

Where clearance is lost.

REG. No. 4. In all cases where any collector, weigh-master or inspector shall ascertain the true weight or quantity of a boat's cargo he shall certify the same on its clearance; and in all cases where he shall not ascertain the weight or quantity, he shall indorse on the clearance an order for the boat to stop at the first weigh-lock at which it arrives and be weighed; but the indorsement of a collector that the cargo is correct shall not be an authority for a boat to pass any weigh-lock or collector's office without undergoing an inspection by weighing, measuring or counting.

Cargo to be certified on clearance.

REG. No. 5. Boats having been weighed at Albany or West Troy, going west, shall again be weighed at Utica, Syracuse or Rochester; and boats having been weighed at any of the western weigh-locks shall be again weighed at Albany or West Troy (unless the collectors at those places shall be well satisfied, either by administering an oath or by inspection, that the cargo is correctly stated in the bill of lading); and boats having been weighed at Waterford shall be again weighed at Albany or West Troy; and boats having been weighed at either of the last-mentioned places, going north, shall be again weighed at Waterford, except that such boats as enter or leave the Champlain canal at Waterford need only be weighed once at that place. And any person having charge of any boat whose cargo pays toll by weight, who shall neglect or refuse to have said boat and cargo weighed, at least once on each trip, in a weigh-lock, shall be subject to a penalty of twenty-five dollars.

Boats to be weighed twice.

Under this regulation boats going east passing the Utica weigh-lock, and not before weighed, must be weighed at that lock; and boats cleared east of Utica, and destined for or west of that place, if not before weighed must be weighed at the Utica weigh-lock. And any person having charge of any boat whose cargo pays toll by weight, who shall neglect or refuse to have said boat and cargo weighed, at least once on each trip, at the Utica weigh-lock, as above required, shall be subject to a penalty of twenty-five dollars.

Boats to weigh at Utica.

REG. No. 6. Every boat destined to New York, or any point in the harbor of New York, which shall not, on its arrival at Albany, West Troy or Waterford, have its cargo in such condition, either by the manner of its arrangement on board the boat, or by causing it to be wholly or partially unladen, that the collector or the inspectors can compare the cargo with the

New York boats.

bill of lading and clearance, to see that the full toll has been paid on the same, the original clearance of such boat shall be deposited with the collector where such boat shall leave the canal to enter the Hudson river; and such collector shall deliver to the master, or person having charge of such boat, a true copy of such clearance, without charging any fee therefor; and it shall be the duty of the master of every such boat, immediately on the arrival thereof in the city of New York, and before any part of the cargo shall be unladen, to present the said copy of clearance to the collector of canal tolls, at his office in the city of New York, together with the bill of lading; and such boat shall, on its return to Albany, West Troy or Waterford, be refused a clearance unless the master produce a certificate of the collector in New York to the correctness of the clearance and bill of lading of such down cargo. And the collector in the city of New York shall in no case grant a clearance to any boat where the master thereof shall have neglected or refused to comply with the provisions of this regulation, nor unless the full toll on the whole of the down cargo shall have been paid.

Report of  
frauds.

REG. No. 7. Each collector and weigh-master shall make a monthly return to the auditor, specifying the name and master of each boat; the cargo of which he has discovered to have cleared for less than it actually contains, under circumstances giving rise to any suspicion that a fraud upon the revenue was intended; and the auditor is requested, in case any boat shall be returned to him as having repeatedly cleared for a less amount of cargo than it has been found to contain, to give directions that such boat be rigidly inspected at each collector's office and weigh-lock, and that the master thereof be required, when he clears the said boat, in all instances to verify the correctness of the bill of lading; and in case the auditor has reason to believe, or it is represented to him by any officer or agent on the canals that a false oath has been taken, he shall take the necessary steps to have the person taking it proceeded against for perjury.

One-third  
treble toll  
to be paid  
to the  
officer dis-  
covering  
the fraud.

REG. No. 8. All treble toll, when collected, shall be accounted for and deposited by the collector, the same as other tolls, the collector specifying each case in which treble tolls are collected in his monthly abstract, with the name of the officer by whom the articles so charged with treble toll was discovered; and on closing the collector's accounts for the season, there shall be allowed and paid by the auditor one-third of such treble toll, so collected to the collector, weigh-master or inspector who shall have discovered the articles not entered on the bill of lading, and on which treble toll was properly collected under the provisions of existing statutes.

Each raft  
or tow to  
have a  
clearance.

REG. No. 9. Every collector of canal tolls is required to give a separate clearance upon and for every raft or tow of timber clearing from his office upon the canal, and no clearance shall be given for any raft or tow until the quantity of timber therein

shall be ascertained by actual measurement or count; and every person applying for a clearance for a raft or tow of timber shall present to the collector a bill specifying the number of sticks and the quantity of timber in each crib contained in such raft or tow, and shall make an affidavit of the truth of the contents of such bill, and file such bill and affidavit with the collector.

REG. NO. 10. Where any boat or other float shall depart from a place where there is no collector's office destined to a place where there is no such office, and there being no intermediate collector's office, the master of such boat or float shall deliver to the lock-tender, at the first lock which he shall pass, a true bill of the quantity and description of the lading of such boat or float, specifying the place from which it departed and to which it is destined, and shall, within ten days after arriving at the place of destination, deliver a like bill to the collector nearest to the place of delivery, and shall pay such collector the tolls due on such boat or float, and its lading; and every master or other person having charge of such boat or float, who shall omit to deliver such bill either to the lock-tender or collector, or to pay such tolls at the time above prescribed, shall, for every such offense, forfeit the sum of twenty-five dollars. Every lock-tender receiving any such bill shall, within three days thereafter, transmit the same to the collector to whom the tolls are to be paid.

Floats  
passing  
between  
offices.

REG. NO. 11. Whenever a boat shall not proceed to the place to which she is cleared, the clearance of the boat shall be left with the last collector passed in the course of the voyage; and such collector shall give the master or owner a copy of such clearance.

Clearance,  
where left  
when boat  
stops short  
of place  
cleared to.

When additional toll is collected on a cargo whose clearance is to be deposited with the collector receiving such additional toll, it shall be entered on the certificate book, and the clearance of the boat and cargo paying the toll, the same as if the clearance was to be deposited in another office; and that said additional toll shall also be entered and receipted on the first return clearance of said boat, in which the collector shall enter the number of the clearance on which such additional toll was collected and the name of the office at which such clearance was issued.

Additional  
toll, how  
entered.

REG. NO. 12. Where any boat, scow or other craft, navigating either of the canals of this state, shall be laden with articles paying different rates of toll, or which articles some of which shall be chargeable with toll by weight, and others by measure or count, it shall be the duty of the master or owner so to arrange the said lading that the several collectors, weighmasters and inspectors on canals can conveniently examine and inspect the same. And if not so arranged the master or owner shall, at his own expense, on the request of any collector, weighmaster or inspector, unlade in whole or in part the said cargo, so as to furnish all the necessary information for the purpose of imposing tolls or detecting or preventing frauds. And in

Boats to  
be loaded  
so that  
they may  
be conveniently  
inspected.

case of the neglect or refusal of any master or owner to comply with this regulation, the whole cargo of such boat, scow or other craft shall be charged with tolls at the rate of those articles on board paying the highest rate of toll.

Master to be sworn and questioned.

REG. No. 13. Every boat arriving at Schenectady, from Albany or West Troy, shall be inspected by the collector at the former place; or the collector shall, at his discretion, put the master of the boat upon his oath as to the correctness of his bill of lading and clearance, as compared with his cargo. And in case he shall put the said master upon his oath, he shall put to him the following questions, and reduce such questions and answers to writing, and require the same to be signed and verified by such master:

“Do the bill of lading and clearance, now delivered by you, contain the true account and whole weight of all the property now on board of your boat and the true distance each parcel thereof has been or is to be carried under this clearance?”

“Is the property composing your present cargo of the kind and description stated in the bill of lading and clearance now delivered?”

“Has the full toll, according to the established rates, been paid on all the property conveyed on your boat, and composing all the cargo for her present trip to this place?”

Together with such other questions as the said collector may suppose it necessary to put, to ascertain the full state of facts in relation to such boat and cargo.

Masters to be sworn by other collectors.

REG. No. 14. Every other collector upon any of the canals shall put the master of every boat or raft upon his oath when he shall consider it proper to do so, or when he shall be directed to do so by the auditor; and in every such case, the above questions shall be put to the said master, together with all such other questions as any such collector shall consider it necessary to put to ascertain the whole truth in relation to any such boat and cargo, or raft.

Master refusing to take oath.

REG. No. 15. The master or person having charge of any boat or float, who shall refuse to take the oath required by any collector, or shall refuse to answer on oath any question which the collector is authorized to propound, shall be subject to a penalty of twenty dollars.

Weight of new boats to be ascertained within thirty days.

REG. No. 16. The master or owner of every new boat navigating any of the canals of the state, and carrying freight, shall, *within thirty days after the date of its first clearance*, procure to be ascertained by actual weight, at some one of the weigh-locks upon the canals, the true light weight of his boat; and the weigh-master weighing every such boat shall give to the master or owner presenting the boat at the weigh-lock a certificate, stating the true light weight of such boat, as ascertained by his weigh-lock, and stating in every such certificate the accurate measure of the water in the boat when so weighed. And whenever the said boat shall draw three and a half feet of water, the said weigh-master shall cause said boat to be

distinctly marked on each side, at the bow, stern and midships, at the water surface of such three and a half feet, three feet and nine inches, four feet and five feet and nine inches, and no boat shall navigate the canals without such water-mark; and the owner or captain shall renew the said marks as often as the same may become obliterated, from any cause, under the penalty of twenty-five dollars for any neglect or omission.

REG. No. 17. Every boat before being weighed for the purpose of ascertaining the light weight, shall be as nearly cleared of the water on board as is practicable with ordinary care and pains, and every weigh-master and his assistant shall use all possible vigilance to see that this is done before the boat is weighed; all wood and other articles on board, having the effect to increase the light weight of any boat, shall be taken out, and no article shall be included in the light weight, except the fixtures, necessary furniture and tackle of the boat. No deduction shall be made, by a weigh-master or collector, from the weight of any boat and cargo on account of more water in said boat than when last weighed light.

Boat to be cleared of water, wood, etc., before being weighed.

REG. No. 18. Every master or owner of any boat navigating any of the canals of the state, who shall omit to cause the light weight of his boat to be ascertained in the manner before prescribed, and within the time before limited, shall for every boat owned or navigated by him, the light weight of which shall not be so ascertained within the time aforesaid, forfeit and pay a penalty of five dollars at each weigh-lock at which the boat shall arrive, until such light weight shall be ascertained; but this penalty shall not be imposed upon the master or owner of any boat not having on board freight subject to the payment of toll by weight.

Omission to get light weight.

REG. No. 19. Where any boat shall be presented at a weigh-lock, for the purpose of ascertaining the light weight of the same, in such a condition or under such circumstances as would make the apparent light weight of the boat greater than the real light weight of the same, the captain or other person who shall present the boat to be weighed light shall forfeit and pay for every such offense a penalty of twenty dollars.

Fraud in light weight.

REG. No. 20. Every weigh-master, or in his absence his assistant, whenever he may believe it necessary, is hereby authorized and directed to order any empty boat passing his weigh-lock, or lying within a convenient distance from the same to go into the lock and be weighed; and whenever, in the opinion of the weigh-master, it may be necessary to unload the whole or any part of a cargo for the purpose of ascertaining the true measurement or weight of the same, or for the purpose of ascertaining the correct light weight of the boat, the boat shall be unloaded as he may direct; and every master or owner of any boat, or any other person having charge of the same, who shall refuse or neglect to obey any such order to unload, shall, for every such offense, forfeit and pay a penalty of fifteen dollars.

Duty of weigh-master.

Refusing  
to go into  
a weigh-  
lock.

REG. No. 21. Any person having charge of any boat, who shall refuse to take his boat into a weigh-lock, when required by a collector or weigh-master, shall be subject to a penalty of twenty-five dollars.

Toll when  
refunded  
on addi-  
tion by  
weigh-  
lock.

REG. No. 22. Toll will not be refunded on an addition made by a weigh-lock in consequence of using the light weight of a previous year, except in case of an addition made to a cargo under the first clearance for the season, and then only when such first clearance shall have been taken at a place where there is no weigh-lock. And no toll shall be refunded on any boat and cargo when such boat shall take a second clearance and pass to her place of destination by a route longer or shorter than that by which such boat was first cleared, unless there shall be an obstruction in the navigation by the route first cleared.

Collectors  
may exam-  
ine for-  
warders'  
books, and  
the for-  
warders  
and their  
clerks on  
oath.

REG. No. 23. Any collector of tolls upon the canals shall, whenever he for any cause deems it proper or advisable, call upon any persons employed in the forwarding business, at their respective stores or warehouses, and examine the books and accounts kept by such persons, or any books and accounts kept at such store or warehouse of the property shipped therefrom upon any of the canals of this state; and such collector shall also, if he deems it proper, examine, upon oath, all or any of such persons so engaged in the forwarding business, and any or all of the agents, clerks or employees of such persons, or any other person or persons he may deem proper, in relation to any such property, the shipment or receipt of the same, the books and accounts thereof as kept by the said house or company, and in relation to any bills of lading issued by them and presented to any collector upon the canals for the purpose of obtaining a clearance or receipt thereupon.

Refusal of  
forward-  
ers.

REG. No. 24. If any such person or persons, their agents, clerks or servants, shall, upon the request of any collector, refuse to permit their books to be examined, or shall refuse to permit himself or themselves, their agents, clerks and servants, or any of them, to be examined upon oath touching the matters mentioned in the last preceding regulation, the collector making such request shall, as soon as may be, communicate to the auditor the fact of his having made such request, the cause of his making the same, and the fact of such refusal, with the reasons, if any, given therefor; and shall refuse a clearance to any boat on board of which any property has been conveyed, and concerning which he wishes to examine such books.

Bills of  
lading for  
salt.

REG. No. 25. Whenever any bill of lading shall be presented to any collector of canal tolls for the purpose of obtaining a clearance or receipt of the property mentioned in such bill of lading, and any part of the property shall consist of salt in barrels or casks, the collector shall require that the manufacturer's brand, as marked upon said barrels or casks, shall be correctly and truly set down and specified in the said bill of



lading; and he shall transcribe into his certificate book, and insert upon the clearance of any such salt, the mark or brand of the manufacturer, as given in the bill of lading so presented.

REG. No. 26. Any person who shall present any such bill of lading, with the manufacturer's mark or brand to any salt mentioned therein untruly specified and set down, shall, for every such offense be liable to all the penalties imposed by the law upon persons presenting false bills of lading of property to be cleared for transportation upon the canals.

Bills of lading for salt.

## 2D. RELATIVE TO TOLLS UPON PASSENGERS, AND COMMUTATION THEREFOR.

REG. No. 27. The auditor of the canal department may permit freight and packet boats to commute for tolls payable upon passengers, according to the established rates, by paying an additional toll of three mills per mile upon freight boats, and one cent per mile upon packet boats.

Auditor may permit boats to commute.

REG. No. 28. The auditor shall prescribe a form of an agreement to be executed by the master, agent or proprietor of any boat or boats, who may elect to commute for the tolls payable upon passengers, and he shall establish such rules as he may deem necessary, in relation to the commutation of tolls upon passengers.

Auditor to prescribe form, etc.

REG. No. 29. Such election or agreement to commute shall be made before the tenth day of May in each year, and shall continue through the season.

Election, when to be made.

REG. No. 30. The collector of canal tolls receiving from the master, owner or proprietor of any boat or boats a consent and agreement, shall give to the person from whom he shall receive such consent and agreement an acknowledgment, such as shall be prescribed by the auditor of the canal department.

Collectors to give acknowledgment, etc.

REG. No. 31. The master or owner of every boat intended to navigate any of the canals of the state night and day, or which belongs to any regular line of packet or freight boats, who shall not have elected to commute for the tolls upon passengers to be transported upon such boat, according to the regulations established for that purpose, shall, to entitle such boat to make statements of passengers monthly, or oftener, if he choose so to do, pursuant to the requirements of existing statutes, deliver to some collector, on or before the fifteenth day of May in each year, a certificate in writing, signed by the said master or owner, which certificate shall state that the said boat is to navigate the canals night and day, or that it belongs to some regular line of packet or freight boats, as the case may be, naming the line to which the said boat belongs; and shall further state the name of the collector's office at which such boat will make its statements of passengers and pay the tolls thereon for the season; and every such boat shall make its statements of passengers and pay the tolls thereon at the col-

Boat not commuting may make statements.

lector's office named in the said certificate, and to no other, unless as hereafter provided.

State-  
ments to  
be made  
on the  
canal  
where  
boat runs.

REG. No. 32. All boats filing such certificates shall elect to make their statements of passengers and pay the tolls thereon for the season at one of collector's offices on the canal where the boat is intended to run; and where the boat runs on more than one canal, the election shall be made at an office on the canal where the boat principally runs. If, at the close of navigation, or at the end of the last passage of any boat for the season, the boat shall be stopped or laid up at a distance from the office elected, the master may make the statement or affidavit then due, and pay the tolls thereon at any other collector's office.

Duty of  
collector.

REG. No. 33. Every collector, to whom any such certificate shall be delivered by the master or owner of any boat, shall give to such master or owner an acknowledgment of the receipt thereof in writing, signed by such collector, and stating the name of the collector's office to which such certificate shows that the statements of passengers for the said boat are to be made, and shall forthwith transmit to the auditor the certificate so delivered to him.

Boats,  
when to  
pay toll  
at each  
office.

REG. No. 34. Boats running night and day, or belonging to any regular line of freight or packet boats, and which do not pay commutation toll, shall, until they file the certificate required by the 31st regulation, be charged toll on all passengers conveyed in such boat in the same manner as required to pay toll on property conveyed.

Auditor  
may  
change  
office  
elected.

REG. No. 35. The auditor shall, at his discretion, and upon the application of the master or owner of any boat, permit such master or owner to change the collector's office at which the statements of passengers for his boat are to be made as designated in the certificate of the said master or owner. to any other collector's office upon the canals.

### 3D. RELATIVE TO THE NAVIGATION OF THE CANALS.

Floats  
to carry  
lights at  
night.

REG. No. 36. Every boat passing on either of the canals of this state, or on any feeder of either of them, is required, at all times during the night, to carry conspicuous lights on the bow of the boat; and every raft, navigating either of the said canals or feeders at night, shall carry a conspicuous light on the forward end of the same. And every raft moored or tied up shall, at all times during the night, have a conspicuous light at each end of each tow, near the outer corners thereof; and every infraction of this regulation shall subject the master, owner or navigator of any boat or raft to the penalty of ten dollars.

Where  
not to  
stop.

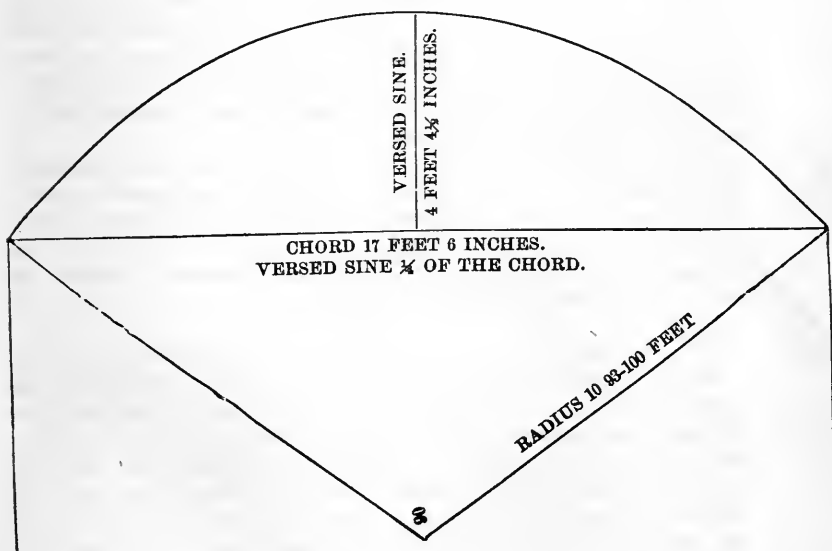
REG. No. 37. No boat or float shall unnecessarily stop, lie by or be moored within twenty rods of any lock, except in a basin. And every master, owner or navigator of any boat or float, who shall violate this regulation, shall be subjected to the penalty of ten dollars.

REG. No. 38. Any unreasonable or unnecessary delay of a boat or float in a lock, or in entering or leaving a lock, shall subject the person or persons having charge of such boat or float to the penalty of five dollars; and every boat or float which shall not be towed into a lock and out of it, when other boats or floats are in waiting to pass said lock, shall be considered as having violated this regulation. Delay in a lock.

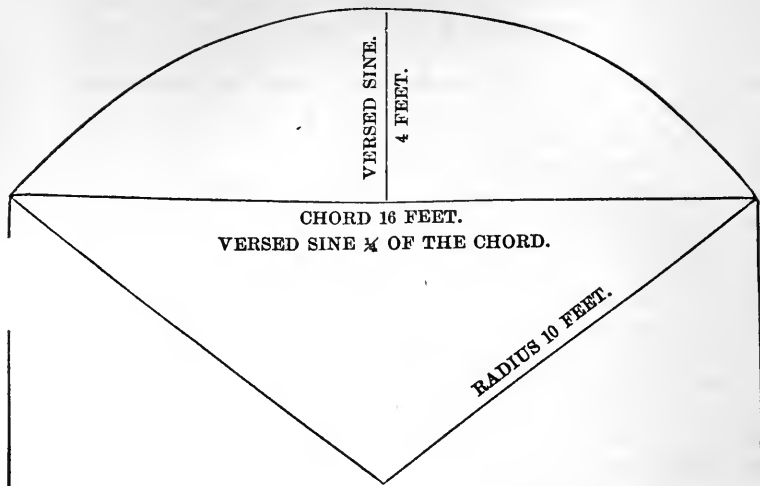
REG. No. 39. Every boat or float which shall arrive at any lock, and which shall not improve the first opportunity of passing the same, shall lose its preference, so long as there may be any other boat or float at the lock ready to pass in the same direction. Delay in passing into lock.

REG. No. 40. In order to protect other boats and the canal banks and structures from injury, no scow or other boat, hereafter to be built and registered, shall be permitted to navigate any canal, unless the whole bow of said scow or boat be constructed of an elliptical or semi-circular form, the versed sine of which shall not be less than one-fourth of the chord, in form as follows: To have semi-circular bow

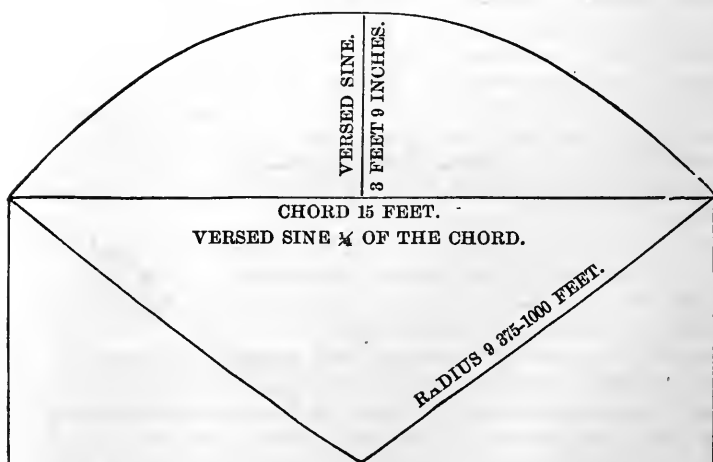
FORM A.



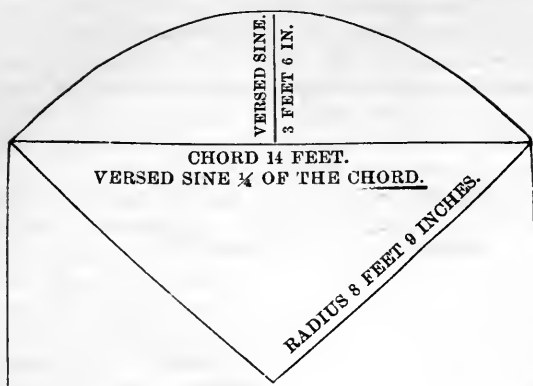
FORM B.



FORM C.



## FORM D.



The master, owner or navigator of any scow or other boat **Penalty.** used on any of the canals, in violation of this regulation, shall be subject to a penalty of twenty-five dollars, and five dollars additional for every day that such boat shall be run in violation of this regulation.

[That boats now navigating the canals of this state, May 8, 1862, not built in accordance with the 40th regulation of this board, be and the same are hereby allowed to be registered the same as if built in conformity with said regulation.

That no boat built after the 1st day of July, 1862, in violation of the 40th regulation of this board, for the purpose of navigating the canals and navigating the same, shall be allowed to be registered, and that the auditor be requested to enforce the penalty against any such boat built after the day above specified.]

That the collectors of tolls be and they hereby are specially directed not to register any boat or scow after the 1st day of July, 1862, whose bow is not constructed in conformity to regulation No. 40, of the canal board.

That on all boats or scows navigating the canals of this state and used chiefly for the transportation of property, whose bows are not constructed of an elliptical or semi-circular form, as required by regulation number forty of the canal board, after the first day of September, 1862, a toll of two <sup>1</sup> cents per mile shall be imposed, levied and collected. And the collector shall make special entries of the facts upon each clearance, when the rate of toll imposed by this resolution shall be paid.

Tolls per  
mile on  
boats not  
so con-  
structed.

That the collectors of canal tolls and superintendents of canal repairs be and they hereby are required, and the several canal repair contractors are requested to prosecute for all vio-

Driving on  
tow-path,  
etc.

<sup>1</sup> Amended by reducing the rate of toll from "three" to "two" cents per mile, by resolution April 15, 1871. See proceedings, C. B., p. 138.

lations of section one hundred and eighty-one of article nine, title nine, chapter nine of part first of the 1st edition of the Revised Statutes, which prohibits the leading, riding or driving any horse, ox, ass, mule or other cattle upon the towing path of the canals, or upon the bank opposite to such towing path; "but this section shall not be construed to extend to persons towing boats or other floats, or conveying articles unladen, or to be laden from or to a canal."

Filth not  
to be  
thrown  
into  
canals.

REG. No. 41. No carcass, dead animal, putrid substance or filth of any kind, shall be thrown or discharged into either of the canals, or into any basin, reservoir or feeder connected therewith; and a breach of this regulation shall subject the offender to a fine of twenty-five dollars.

Duty of  
officers to  
move  
boats in  
certain  
cases.

REG. No. 42. In case of breach or other obstruction on either of the canals, or when the canal is filling with water, the superintendent, canal commissioner, engineer, collector, foreman or lock-tender, shall direct the floats which may be collected near such breach or other obstruction, or which in his opinion may obstruct the filling of the canal with water, to lie in such places and to be moved backward or forward on the canal as he shall think most advisable and proper; and a refusal to comply promptly with his direction in this respect, shall subject the owner, master or person having charge of said float to a penalty of ten dollars.

Rafts.

REG. No. 43. No raft or tow of timber, passing on either of the canals and feeders, shall consist of more than six cribs, and no raft or tow of timber shall approach any other raft or tow of timber nearer than thirty rods, unless for the purpose of passing, or to be moored nearer than thirty rods to any other raft or tow of timber which shall be first moored.

At Lock-  
port.

And such rafts or tows of timber, when awaiting to be locked from the level above the locks at Lockport, shall, in all cases, be moored on the berme side of the canal, and down boats shall be moored in like manner on the towing-path side of the canal, so as to leave a space between the two for the free passage of upward bound boats. When a tow of timber belonging to the same party shall have passed through said locks into the basin at foot of same, it shall proceed immediately east to the wide water below, so as to afford room for other rafts and boats as they pass from the locks into said basin. No raft or tow of timber to be locked through the locks at Lockport, between the hours of seven o'clock P. M., at night, and five o'clock A. M., in the morning, except as the lock-tender of said lock may, in his discretion, allow rafts, well and securely made up, to pass through during the other hours of the day and night.<sup>1</sup>

How made  
up and  
towed.

The first and leading crib in every raft or tow of timber, on either of the canals or feeders, shall have the outer edge of the forward end of every outside stick rounded. And no traverse stick on any crib of timber shall extend within one inch of the

<sup>1</sup> See note on next page.

outer edge of the outside stick of such crib of timber. And the tow line shall be elevated on the front end of the raft or tow, at least three feet above the surface of the water.<sup>1</sup>

And every violation of either of the provisions of this regulation shall subject the owner, person or persons having charge of said tow or raft to a penalty of ten dollars.

REG. No. 44. Every boat passing on either of the canals shall have its rudder so constructed or secured as not to catch or cut the tow rope of a passing boat. And every violation of this regulation shall subject the master or owner to a penalty of five dollars. Rudder.

REG. No. 45. The clearance or permit of every boat or float shall be exhibited to the first lock-tender after such boat or float shall have left the collector's office; and unless the clearance or permit, have on it the signature of the collector at such office or of his clerk, is so exhibited, such lock-tender shall not permit the boat or float to pass. Clearance and permits to be exhibited.

REG. No. 46. No person or persons except the lock-tender, shall be permitted to open either of the large gates of a lock, or the paddle gate, without the permission of the lock-tender. And every person violating this regulation shall be liable to a fine of five dollars. Opening lock or paddle gates.

REG. No. 47. Every boat navigating the canals, shall, in passing a lock, fasten the bow and stern line to the snub post on the bank of the lock, until the lock is either filled or emptied, as the case may be. And the master or owner of every boat which shall violate this regulation shall be liable to a fine of five dollars. To use snub post at locks.

REG. No. 48. The horse or horses of any float navigating the canal shall not pass over a towing-path bridge faster than on a walk, nor pass into or out of any boat or float over or upon the walls or sides of any lock on either of the canals of this state. And the master or owner of every float which shall violate this regulation shall be liable to a fine of three dollars. Speed on bridges, etc.

REG. No. 49. Whenever any float passing on either of the canals shall approach, within the distance of fifty feet, any other float, not propelled by steam or other mechanical power, which shall at the time be moving in the same direction, and at a less speed than at the rate of four miles per hour, it shall be the duty of the forward float to turn from the towing-path and give to the rear float every practicable facility for passing; and to stop whenever it shall become necessary until the rear float shall have passed. "And whenever any float, propelled by steam or other mechanical power, shall approach within the distance of twenty feet of any other float moving in the same direction, it shall be the duty of the forward float to turn toward the towing-path and cause their horses or machinery to cease towing or propelling until the rear float shall have passed and have placed a distance of five feet from the stern Float overtaken, to turn out.

Float propelled by steam to take berme bank in passing.

<sup>1</sup> As amended June 29, 1869. Proceedings, pp. 234 and 236.

of the passing float back to the bow of the float which is passed; and every violation of this regulation shall subject the owner, master or navigator of the float which is passed to pay a penalty of five dollars."<sup>1</sup>

Steam  
boats,  
exemptions and  
prefer-  
ences.

1. Boats propelled by steam or other mechanical power on the canals of this state, shall be exempt from toll on their machinery.

2. Such boats shall carry a prominent red light in the night to distinguish them from other boats.

3. The machinery of all boats propelled or drawn by steam upon the canals of this state, and steam tugs used exclusively in the towage of boats thereon, together with the machinery and fuel necessary therefor, shall hereafter be exempt from the payment of tolls.<sup>2</sup>

4. All boats propelled or drawn by steam together with the boats in tow thereof, shall have preference at the locks over other boats and floats, except as otherwise provided by statute.<sup>2</sup>

Two floats  
meeting in  
vicinity of  
a raft.

REG. No. 50. In all cases where two boats or floats going in opposite directions shall approach each other, in the vicinity of a raft, in such manner that they would, if both should continue their headway, meet by the side of such raft, the boat or float which shall be going in the same direction as the raft shall stop until the boat or float going in the opposite direction shall pass such raft. And every master of a boat who shall violate this regulation shall forfeit the sum of ten dollars.

Injuries to  
a lock.

REG. No. 51. Every boat or float shall be conducted into, through and out of every lock on the canals of this state in a careful manner, so as to do no injury to such lock. And for every neglect so to conduct the same, the owner or master of such boat or float shall pay a penalty of ten dollars.

Penalty  
for placing  
things in  
canals or  
feeders, or  
on ice, etc.

REG. No. 52. No person or persons shall place on the towing-path, berme bank, or in any canal, feeder or reservoir, or on the banks of any reservoir, or on the ice in any canal, feeder or reservoir, logs, timber or other materials, without the permission of a canal commissioner or a superintendent. And no person or persons shall fell trees, roll or carry logs, timber or rubbish of any kind within the flow line of either of the reservoirs; meddle with or interfere with any of the fixtures or buildings of either of the reservoirs. And every violation of these regulations shall subject such person or persons to a penalty of ten dollars.

Mooring  
floats.

REG. No. 53. No person or persons shall, without the permission in writing of a superintendent, moor a boat or float on either of the canals for a longer period than four days at any one time, unless in a basin or where the canal is of sufficient width to pass three boats abreast. In cities or villages no boat or float shall be moored in the canal (except in a basin) for a

<sup>1</sup> As amended April 29, 1869. Proceedings, page 205.

<sup>2</sup> As amended Jan'y 24, 1871. Proceedings, page 45.



longer period than is reasonable for discharging or taking in the load of such boat or float, without a written permission from the superintendent, or, in his absence, of the collector, weigh-master or inspector. And any person or persons who shall violate this regulation shall be liable to a penalty of ten dollars.

REG. No. 54. No person shall, without the permission in writing of a canal commissioner or superintendent, roll or draw from or into any of the canals or reservoirs, over the side of any lock or aqueduct, or over any structure of masonry, or over the side of any embankment, of any canal, reservoir or feeder, any log, timber or other material. And every violation of this regulation shall subject every person concerned in it to a penalty of ten dollars.

Drawing materials from or into canals over structures.

REG. No. 55. It shall be the duty of every collector of tolls, inspector or weigh-master, and if there be no collector, inspector or weigh-master present, of every superintendent, whenever in the opinion of such officer it shall be necessary, to assign berths to all boats when loading, unloading or stopping at any landing place on the canal. And every master, owner or person having charge of a boat who shall refuse or neglect promptly to comply with directions given by a collector, inspector, weigh-master or superintendent, or any person who shall forcibly remove or attempt to remove any boat from the berth assigned it by either of said officers without his permission, shall be subject to a penalty of ten dollars.

Berths, how assigned to boats while loading or unloading or stopping.

REG. No. 56. The margin of the canal on each side of the Little basin, near the intersection of the Erie canal with the Hudson river, being a towing path, all the laws and regulations respecting obstructions of the towing-path of the Erie canal shall be enforced against such persons as obstruct the grounds on the margin of the said basin, or occupy the same with wood, stone, lumber or other things, without the written permission of a superintendent or collector.

Little basin, Albany.

REG. No. 57. The masters of all boats arriving at the city of Rochester, laden with staves, which are consigned or are to be left within the corporate bounds of the city, shall, before unlading the same, or any part thereof, cause the weight of the boat and cargo to be ascertained at the weigh-lock at that place. And for a violation of this regulation the master or owner of every such boat shall be liable to a penalty of twenty-five dollars, and the collector or weigh-master at that place may prosecute for the same in the name of the people of this State.

Boats laden with staves.

REG. No. 58. No float shall pass either of the locks upon the Chemung canal, between the collector's office in the village of Havana and the northeasterly end of the summit level, nor of the Crooked Lake canal, above the village of Dresden, after dark or before daylight, without the written permission of a canal commissioner or superintendent. And every violation of this regulation shall subject the master or owner to a penalty of ten dollars.

No lock-age at night on portions of Chemung, Crooked lake, and on the Chenango canals.

[No boat or float shall pass either of the locks upon the Chenango canal, between the setting of the sun and its rising, without the written permission of the canal commissioner or superintendent in charge. Any and every violation of this regulation shall subject the master or owner to a penalty of twenty-five dollars.<sup>1</sup>]

Canal officers to make entry of offenses.

REG. No. 59. Superintendents, collectors, weigh-masters, inspectors and lock-tenders are hereby required, on every violation of either of the above regulations, to make an entry of the nature of every offense, the names of the offenders, the time and place where committed, and the names of witnesses. And it is further strictly enjoined on each of the above officers to carry these regulations into full effect.

Clearances to Chemung or Crooked Lake canals.

REG. No. 60. Masters of boats passing the Cayuga and Seneca canal, with cargoes destined to any point on the Chemung or Crooked Lake canals, shall, before they receive a clearance at Havana or Dresden, present to the collector a copy of the original clearance left at Geneva: which copy shall be furnished by the collector at Geneva, free of charge.

Clearances from, etc.

REG. No. 61. Masters of boats passing from the Chemung or Crooked Lake canal, and having property on board which has paid toll on either of those canals, and persons having charge of rafts, shall, before said property or rafts are cleared on the Cayuga and Seneca canal, present to the collector at Geneva a copy of the clearance on which said toll was paid; which copy shall be furnished by the collector on either of the first named canals with which the original clearance is deposited, free of charge.

May pay tolls at Havana.

REG. No. 62. Boats passing up the Chemung canal with merchandise from tide-water, destined for Corning and Elmira, may pay toll on the same, at Havana, to each of the above-named places; and when so paid they shall not be subject to any additional toll upon such merchandise as shall be first carried to Corning or Elmira, and thence to the other of those places.

Name and hailing place of boats not to be changed unless to conform to custom-house registry.

REG. No. 63. No boat will be permitted hereafter to change its name or hailing place, unless it shall be necessary to make the name conform to the United States custom-house registry, by reason of a change of name on the canal, after having been registered at the custom house. And the auditor is hereby authorized to change the name and hailing place of boats, whenever such change may be necessary to conform to the laws of the United States.<sup>2</sup>

Stock, etc. exempt from toll, passing to and from annual state fair.

REG. No. 64. Stock, agricultural productions and implements, and specimens of machinery, mechanical work and manufactures, intended for exhibition at the annual state agricultural fair, shall be cleared and pass on all the canals, free of toll, to and from the place of holding said fair.

<sup>1</sup> Resolution of May 9, 1865.

<sup>2</sup> As amended Feb'y 9, 1865. See also Laws 1864, ch. 412, § 8, *ante*, § 679.

#### 4. AUTHORITY OF CANAL OFFICERS TO SUE FOR PENALTIES.

##### 1. COLLECTORS.

REG. No. 65. Each collector of tolls upon any of the canals is hereby authorized to prosecute, in the name of the people of this state, for any penalty incurred by the violation of any or either of sections 119, 123, 124, 125, 130, 143, 147, 152, 160, 161, 162, 163, 164, 179, 180 and 181, of title 9, chapter 9, part first of the Revised Statutes; and for any penalty incurred by the violation of any or either of the regulations of the canal board, to wit: regulations Nos. 2, 3, 10, 15, 21, 26, 36, 37, 38, 40, 41, 42, 43, 44, 48, 49, 51, 52, 53, 54, 55 and 57; and shall prosecute for all such penalties, whenever such collector shall know, from his own observation, or have good cause to believe, that any of the said penalties have been incurred.<sup>1</sup>

##### 2. SUPERINTENDENTS.

REG. No. 66. Each superintendent of repairs upon any of the canals is hereby authorized to prosecute, in the name of the people of this state, for any penalty incurred by the violation of any or either of the following sections of title 9, chapter 9, part first of the Revised Statutes, to wit: sections 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 175, 176, 178, 179, 180, 181, 182; and also, for any penalty incurred by the violation of any or either of the regulations of the canal board, to wit: regulations Nos. 2, 36, 37, 38, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 58; and shall prosecute for all such penalties, whenever such superintendent shall know, from his own observation, or have good cause to believe, that any of the said penalties have been incurred.<sup>1</sup>

##### 3. WEIGH-MASTERS.

REG. No. 67. Each weigh-master upon any of the canals is hereby authorized to prosecute, in the name of the people of this state, for any penalties incurred by a violation of any or either of the regulations of the canal board, to wit: regulations Nos. 2, 3, 18, 19, 20, 21 and 57, and shall prosecute for all such penalties, whenever such weigh-master shall know, from his own observation, or have good cause to believe, that any of the said penalties have been incurred.

##### 4. LOCK-TENDERS.

REG. No. 68. Each lock-tender upon any of the canals is hereby authorized to prosecute, in the name of the people of this state, for any penalties incurred by a violation of any or either of the following sections of title 9, chapter 9, part first of the Revised Statutes, to wit: sections 157, 158, 159, 160, 161, 162, 163, 179, 180, 181 and 182; and also, for any penalty incurred by any violation of any or either of the follow-

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<sup>1</sup> See note (1) on next page.

ing regulations of the canal board, to wit: regulations Nos. 37, 38, 41, 46, 47, 48, 51, 54, 58; and shall prosecute for all such penalties, whenever such lock-tender shall know from his own observation, or have good cause to believe, that any of said penalties have been incurred.<sup>1</sup>

#### 5. MISCELLANEOUS REGULATIONS.

Boats entering or leaving the canal at Tonawanda.

REG. No. 69. Boats laden at Buffalo or Black Rock and clearing at Tonawanda, when the canal is navigable from Buffalo to Tonawanda, whether propelled by steam or horse power, shall be charged the same tolls, to the place of destination, on the cargoes, as if such boats and cargoes were cleared at Buffalo. And all boats destined to Buffalo or Black Rock and leaving the canal at Tonawanda, shall pay full toll on the cargo to Buffalo from Tonawanda, and no such boat shall be permitted to pass from the canal into the river, through the lock at Tonawanda, without a pass from the collector at that place, and the said collector will receive and account for all the tolls payable under this resolution.

Boats not to pass guard-lock at Black Rock, without permit or clearance.

REG. No. 70. No boat or other float shall be allowed to pass the guard-lock at Black Rock, unless the master or other person having charge thereof, shall have and present to the lock-tender a permit or clearance from a canal collector; and every violation of this regulation shall subject the master or other person having charge of such boat or other float, to a penalty of "five dollars," to be sued for and collected by any superintendent of canal repairs, or collector of canal tolls, or by the lock-tender of such lock appointed by the State, if there be any.

Boats or vessels passing the lock at lower end of Black Rock Harbor, to pay toll.

REG. No. 71. There shall be collected on all canal boats and other boats and floats passing through the lock at the lower end of Black Rock harbor, a toll of "fifty cents" for each lockage; and on sloops and other like craft, steam tugs, propellers and canal steamboats, passing through the said lock, one dollar for each lockage, and the collector of tolls at Buffalo is hereby authorized to collect the same, provided that nothing herein contained shall authorize the imposition of any lockage upon rafts, or upon vessels or boats laden with property to be transported on the Erie canal, or on such steam tug boats, whilst engaged in the business of towing boats and vessels as pay lockages.

Oswego office.

REG. No. 72. It is ordered that the collector's office in the city of Oswego, be kept open (during the season of navigation) from 7 o'clock in the morning, until 10 o'clock in the evening of each day.<sup>2</sup>

Boats and rafts, how not to be moored.

REG. No. 73. The master, owner or navigator of any boat, raft or any craft, navigating any of the canals of this state, shall

<sup>1</sup> The references to "sections" above, are to the 1st ed. R. S., which may be found in this manual in title 9, of chapter ix, in articles seven and eight, between §§ 678 and 789. The numbers of the section R. S., will be found inclosed in brackets at the beginning of the sections.

<sup>2</sup> Adopted February 22, 1864.

not use any grappling irons, hooks or anchors, in mooring such boat, raft or other craft to the banks, towing-path, paving, docking, bridge and aqueduct coping, and bridge, or other work or structure of or upon any of the canals of this state; and a breach of this regulation shall subject the offender to a penalty of twenty-five dollars.

And every collector of tolls, superintendent of repairs, weigh-master, inspector or lock-tender upon any of the canals of this state, are, and each of them is hereby authorized to prosecute, in the name of the people of this state, for any penalty incurred by a violation of the above regulation.<sup>1</sup>

REG. NO. 74. *Whereas*, The officer in command of the United States Watervliet arsenal, at West Troy, has represented to this board the great hazard and danger arising from permitting boats, rafts or other craft navigating the canals of this state, having fires on board, to lay moored within the limits of the said arsenal, and by the discharge of fire arms of any description while passing through the said limits; therefore

*Resolved*, That no boat, float, raft or other craft, navigating the canals, shall, under any pretense whatever, be suffered to stop upon the said canal, or be moored there within the limits of the said arsenal, and for the distance of ten rods north or ten rods south of those limits, and every master or person having charge of such boat, float, raft or other craft, who shall violate this regulation, shall forfeit the sum of ten dollars, and any superintendent of canal repairs, collector of tolls, weigh-master and inspector of boats and their cargoes, upon any of the canals, is hereby authorized to prosecute, in the name of the people of this state, for any penalty incurred by the violation of this regulation; and such superintendent, collector, weigh-master or inspector shall prosecute for such penalty, whenever he shall know from his own observation, or have good cause to believe that such penalty has been incurred.

Boats and  
rafts not  
to stop  
within  
limits of  
Water-  
vliet  
arsenal.

Penalty.

The board having no authority to prohibit the discharge of fire-arms upon the canal within the limits of the grounds occupied by the said arsenal, by the imposition of penalties, would nevertheless caution all persons upon boats on the canal against any such practice, and earnestly entreat them to abstain from it. The danger of communicating fire to the laboratories within the works, whereby explosions causing terrible results may be produced, should induce every man to observe the greatest care and caution in this respect.<sup>2</sup>

REG. NO. 75. That M. D. Raymond, of Clinton, clerk of the collector of canal tolls at Hamilton, on the Chenango canal, be, and he (and his successors in office) is hereby authorized to enforce all canal laws and regulations as fully and to the same

Powers of  
collector's  
clerk on  
Chenango  
canal, at  
Hamilton.

<sup>1</sup>Adopted May 13, 1864. For a decision under this regulation see proceedings, Nov. 13, 1864.

<sup>2</sup>Adopted May 25, 1864.

extent as collectors of tolls or superintendents of canal repairs are now authorized.<sup>1</sup>

False  
bills of  
lading.

REG. No. 76. That the auditor be and he is hereby authorized to give such directions to the collectors of canal tolls as he shall in his discretion deem proper, and as shall secure the execution of the provisions of section 245 of the canal laws, as published by the canal department in 1863, in a manner which shall not be oppressive to those innocent of an intentional evasion or violation of law, and at the same time shall secure a fair and honest compliance with the law requiring true bills of lading to be presented.<sup>2</sup>

Coal for  
Salt Co.,  
at Syracuse.

REG. No. 77. The collector of canal tolls at Syracuse may, in his discretion, waive the weighing of boats laden entirely with coal shipped from Watkins for the use of the Salt Company of Onondaga; provided the affidavit of the shipper, stating definitely the quantity of coal in net weight contained in such cargo, be attached to and accompany each bill of lading presented for a clearance, until otherwise ordered by the auditor.<sup>3</sup>

Patrol-  
men.

REG. No. 78. By act chapter 55, laws of 1870, the canal board has power to determine the method or system by which the repairs of the canals shall be made and their management conducted, and power to appoint patrolmen to carry out and enforce the rules and regulations adopted by said board relative to the navigation of the canals, and compel the observance of the laws in relation thereto.

#### REGULATIONS IN REGARD TO PATROLMEN.

Powers  
and duties.

The commissioner in charge shall assign to each of the patrolmen appointed by the canal board such beat or portion of the canal on his division as he shall deem expedient.

Such patrolmen shall take the oath of office prescribed by the constitution of the state within ten days after notice of appointment, and file the same in the office of the county clerk of the county in which he shall reside, and also in the office of the auditor at Albany.

It shall be the duty of such patrolmen to pass over that portion of the canal assigned them, daily, and oftener if necessary, to see that the levels are kept at a proper and uniform height; that water is not unnecessarily wasted, or wrongfully taken from the canal; that timely warning is given to the repair agents, of leaks or other dangers to the canal; that the locks are well and properly attended; that boats are not overloaded; that boatmen keep their boats moving, and in such shape at all times as not to in any way or manner obstruct the flow of water or navigation.

<sup>1</sup> Adopted May 19, 1866.

<sup>2</sup> Adopted May 27, 1848. The § 245 referred to is § 684 of this manual.

<sup>3</sup> Adopted May 28, 1848.

Every master or person in charge of a boat or float shall obey the orders of the patrolmen as to taking off a part of their cargo, if overloaded; as to keeping their boats or floats in such shape at all times as not to obstruct navigation or the flow of water, and shall move their boats or floats, or moor them as he shall direct, in order to facilitate navigation and promote the best interest of the state and navigator; but for any willful neglect of these things, or disobedience of the orders of the patrolmen, with reference thereto, such master or person in charge of a boat or float shall be liable to a fine of from \$5 to \$10 for each offense, dependent upon the nature of the same, which fine may be laid and collected by such patrolmen, and the boat or float detained until such fine be paid. All fines so collected to be paid to the state.

Each patrolmen, by virtue of act chapter 55, laws of 1870, has police powers and authority to arrest and detain offenders for any violation of the rules and regulations of the canal board made and adopted pursuant to law, until the parties so offending shall satisfy the demands of the same.<sup>1</sup>

REG. No. 79. That the collector at Buffalo be and he is hereby directed not to clear any boat drawing over six feet in depth of water, and that the inspectors, additional clerks of said collector, and the patrolman on that beat, be and are hereby directed to measure and furnish a certificate of such measurement to said collector, of every fully laden boat intending to clear at said office, which certificate shall show the date, name of boat, and draft of water, and be signed by the person making same, the contents of which certificate, with the name of the measurer, shall be entered on the clearance of such boat, in order that the same may be traced directly to the person making such measurement, and any willful neglect to make such measurement, or the making of a false or fraudulent certificate, as to the draft of any boat so measured, shall be deemed a breach of trust, and the party so offending shall be liable to immediate removal from office.<sup>2</sup>

Draft of  
boats at  
Buffalo.

REG. No. 80. That in the opinion of this board the Reims' Champion Boat Scale is superior to any of the other new methods of weighing boats, submitted for examination, and we believe that the interest of the state will be subserved by the adoption of said scale, to the exclusion of all others so submitted, and that this board recommend that all boats navigating the canals of this state use the Champion Boat Scale, making their own terms for such use with the parties owning said scale, and that any boat adopting such scale is hereby exempt

Reims'  
Champion  
Scale may  
be used.

<sup>1</sup> Adopted June 16, 1870. April 7, 1871, the canal board adopted the following resolution: "That it is inexpedient in the present condition of the business of the canals to appoint patrolmen under act chapter 55, laws of 1870."

<sup>2</sup> Adopted September 7, 1870.

from weighing at the weigh-lock, unless necessary to test the accuracy of the scale.<sup>1</sup>

Officials  
not to act  
as agents.

REG. No. 81. Hereafter no superintendent, collector of canal tolls, weigh-master, clerk, inspector or other employee of the state on the canals, shall act as agent for shippers, or freighting firms, engaged in canal commerce, or receive, directly or indirectly, any compensation from such shippers or firms for procuring freight boats, nor shall it be lawful for such employees to influence or to attempt to influence the destination or employment of such boats, and the auditor is requested to notify all canal officials of the passage of this resolution.<sup>2</sup>

Closing  
opening in  
bridge at  
Buffalo.

REG. No. 82. That the canal commissioner in charge of the western division of the Erie canal be and he is hereby requested to cause all openings in canal bridges at Buffalo, made or used for the purpose of freighting canal boats, to be closed up, and that canal and other boats in said city be no longer permitted to ship any part of their cargoes through openings in said bridges.<sup>3</sup>

Tow-  
path, Erie  
canal, to  
be kept  
clear 14  
feet wide.

REG. No. 83. *Whereas*, It is desirable that all obstacles to the passage of teams on the towing-path of the Erie canal should be removed, and that said towing-path be kept clear to the full width of fourteen feet wherever it is practicable ;

*Resolved*, That each and every superintendent of repairs be and he hereby is directed to clear and keep clear the said towing-path, throughout its whole length, of every object, obstruction or thing not legally existing thereon ; and that this board will forthwith remove any superintendent of repairs upon its being established to the satisfaction of the board, upon the complaint of any person, that such superintendent has willfully or with gross negligence, failed to obey the order within such time as may be reasonably necessary to comply with the same.<sup>4</sup>

REG. No. 84. *Whereas*, It is desirable that all obstacles to the passage of teams on the towing-path of the Erie and Champlain canals should be removed, and that said towing-path be kept clear to the full width of fourteen feet.

*Resolved*, That each and every superintendent of repairs be and he hereby is directed to clear and keep clear the said towing-path of every object, obstruction or thing not legally existing thereon, and that this board will forthwith remove any superintendent of repairs upon the complaint of any person that such superintendent has willfully or with gross negligence failed to obey the order or carry this resolution into effect, upon its being established to the satisfaction of this board.

*Resolved*, That the auditor be and he is hereby requested to transmit forthwith to each superintendent of repairs upon the Erie and Champlain canals a copy of these resolutions.<sup>5</sup>

<sup>1</sup> Adopted March 3, 1871.

<sup>2</sup> Adopted July 5, 1872.

<sup>3</sup> Adopted August 23, 1872.

<sup>4</sup> Adopted March 14, 1872.

<sup>5</sup> Adopted April 17, 1873.



REG. No. 85. That, whenever a break occurs upon the Erie, Oswego or other important canals, the auditor shall at once telegraph the extent of the break, and the probable time it will take to repair the same, to each of the collectors' offices upon all the canals, for the benefit of shippers and boatmen.<sup>1</sup>

REG. No. 86. That no two boats or floats shall be moored or lie abreast for the purpose of trans-shipping cargoes or otherwise between the junction of Erie and Champlain canals and the lower Port Schuyler side cut at West Troy.<sup>2</sup>

Adopted.

## RESOLUTIONS ADOPTED BY THE CANAL BOARD IN RELATION TO POWERS AND DUTIES OF CERTAIN CANAL OFFICERS, ETC.

### 1. IN RELATION TO COLLECTORS AND INSPECTORS.

RES. No. 1. Every collector shall produce to the auditor full vouchers by way of receipt, from all persons who shall be employed by him as clerks in his office; each of which receipts shall state particularly the time when the said clerk commenced service, and the time when the service closed, and the rate of compensation per month or day actually paid, and shall also produce the affidavit, required by law, of the actual payment of the money stated in such receipt; and no allowance shall be made to any collector for clerk hire, over and above the sum for which vouchers shall be produced showing the actual payment.

Clerk-hire  
payment,  
etc.

[The salary of a collector, as fixed by the canal board, is in full of *all* costs and expenses of his office, except clerk hire, office rent, necessary expenditure for office light, and fuel not exceeding twelve dollars (to be approved by the canal commissioner in charge), postage on communications to the canal department, which, in all cases, should be prepaid, and necessary furniture. *The canal commissioner is to be consulted before the purchase of furniture is made.* Vouchers for furniture and fuel will not be allowed, unless indorsed with the approval of the acting canal commissioner on the line of canal where the office of the collector is located.]

RES. No. 2. The several collectors of canal tolls will be required to give their personal and constant attention to the duties of their office, and to reside at the places at which their offices are located, during the season of navigation. A collector who is not allowed a clerk is not to farm out his office, or in any way to employ or authorize a person to perform his duties

Collector  
to attend  
person-  
ally, and  
at pla-  
where  
office is  
located.

<sup>1</sup>Adopted May 28, 1873.

<sup>2</sup>Adopted May 28, 1873. See proceedings, July 29, 1873.

or to act for him, except in cases of illness or unavoidable absence from his office.

RES. No. 3. Every collector who is allowed clerks shall employ competent and sufficient persons to assist in the performance of the duties of their respective offices, at as low a rate of wages as such clerks can be procured, without any reference to the price at which those wages are established by this board; but no collector shall be allowed for a greater number of clerks than is fixed by the board.

Duties of  
collectors  
as to in-  
spectors.

RES. No. 4. The collectors at the several places upon the canals, where an inspector is located, shall give him general directions in regard to the services to be performed as such inspector. The collector, from his examination of clearances, and from the reports received from weigh-masters, &c., is prepared to judge what cargoes should be carefully inspected, what tallied off, &c., and he shall direct such inspector to the performance of such services as in his opinion, shall be most effective in detecting carelessness or fraud in the bill of lading or otherwise. The collector shall keep the time each inspector is actually employed in the duties of his office, not counting the time in which such duties are omitted, neglected or carelessly or negligently attended to, and shall pay each inspector, after the expiration of each calendar month, his compensation for services rendered, at the rate fixed by the canal board; and the receipt of the inspector, specifying the number of days or months, as the case may be, for which such receipt is the evidence of payment, and the date from which to which the receipt covers, with the collector's certificate as to the correctness of the time indorsed thereon, shall be the voucher of the collector for such payment.

It shall be the duty of the said inspectors to examine, under the directions of the several collectors, and subject to such regulations as may be prescribed from time to time by the auditor of the canal department, all canal boats and their cargoes departing from or arriving at the places where said collectors' offices are located.

No inspector shall be paid except for time actually employed in the duties of his office, nor unless the collector at the place where such inspector is located shall certify that he has personal knowledge that such inspector has been actually employed during all the time for which payment is claimed.

Inspectors, &c., are authorized, by section 7 of the act chapter 495, Laws of 1859, to administer oaths in all cases connected with their duties.

Not to  
procure  
blanks.

RES. No. 5. No collector, weigh-master or other officer upon the canals shall be allowed to procure blanks, or other printing for their offices, without the written permission of the auditor; inasmuch as the said printing is to be done by, and the blanks are to be furnished from, the canal department.

Collectors,  
*ex officio*  
inspectors.

RES. No. 6. All collectors of tolls upon the canals are considered, and each of the said collectors is hereby declared to

be, *ex officio*, an inspector of canal boats and their cargoes, and that it is the express duty of each collector and his clerks, as far as their office duties will permit, to inspect all boats arriving at, cleared from or passing his office.

RES. No. 7. Each collector of canal tolls shall deposit daily the moneys received by him, as such collector, for tolls, without selling or exchanging any portion thereof, in the bank designated by the canal board as the place of deposit; and in case where an agent is appointed by the deposit bank, the collector shall in like manner deposit daily the money collected by him with such agent.

Collectors to deposit daily.

RES. No. 8. No collector of tolls, superintendent of repairs or other officer on the canals shall be the agent of any bank for the purpose of receiving any tolls directed to be deposited in such bank. Nor shall any such collector, superintendent or other officer on the canals be engaged in shipping or forwarding freight on the canals, nor act as agent for any forwarder or line of boats carrying freight on the canals.

Canal officers not to be agents of banks.

RES. No. 9. The office of the collector shall, in every case, be in a separate room, in which no other business shall be transacted than that which is connected with the collection of tolls; and the collector's office shall not be connected, by a door or other opening, with any other room which is occupied as a grocery, tavern or store, or for vending any commodities to those who navigate the canals.

Collector's office to be in a separate room.

RES. No. 10. Every clerk of the collector shall, before he enters on his duties, take and subscribe an oath or affirmation that he will faithfully discharge the duties of collector's clerk, according to the best of his ability; which oath or affirmation may be taken before any officer authorized to administer oaths, and shall be filed in the canal department. Upon the oath or affirmation of any clerk who shall be authorized by a collector, "to perform all the duties and exercise all the powers legally appertaining to such collector in his absence," the substance of such authority shall be indorsed by the collector before the same is filed in the canal department.

Authority to clerk "duly authorized," to be indorsed on his oath.

RES. No. 11. When any clerk, duly authorized by a collector, shall, in the performance of the duties, or in the exercise of the powers legally appertaining to such collector, and in his absence, be required to affix his name to any paper, he shall, immediately after his christian and surname, affix the following words: "Clerk, collector absent;" and when the collector is in his office, the collector, and not a clerk, shall affix his name to all papers, except the indorsements on the back of clearances.

How clerk to sign his name.

RES. No. 12. Where a collector shall authorize more than one clerk to act for him in his absence, he shall in the indorsement of the authority which, by the foregoing resolution, he is to make upon the oath of said clerk, state that he is the first, second or third clerk, as the case may be; and in the absence of the collector, each clerk, so authorized to act for him, shall

Clerk's order of action.

act in the order of his designation; and no more than one clerk shall act for him at the same time. If the first clerk be present, he, and not the second or third clerk, shall affix his name to all papers, except the indorsement of clearances, adding thereto, "First clerk, collector absent." If the collector and first clerk be absent, the second, and not the third clerk, to act. And the third clerk is only to exercise the powers of collector in the absence of the collector and the first and second clerks.

Oswego  
clear-  
ances, etc.

RES. No. 13. The collectors at New York, Albany and West Troy are authorized and directed to clear boats and property, destined to Oswego, to that place, and receive the tolls thereon; and they shall keep separate accounts of Oswego canal tolls, and make returns of them in the same manner as of Erie and Champlain canal tolls.

Oneida  
lake, etc.

RES. No. 14. The collector at Higginsville is authorized to collect tolls, upon the Erie canal, upon all property which enters the Erie canal from the Oneida Lake canal, and upon the Oneida Lake, Oneida River improvement and Oswego canals.

## 2. APPOINTMENT AND REMOVAL OF COLLECTORS AND WEIGH-MASTERS.

RES. No. 15. Collectors of canal tolls and weigh-masters and their assistants and inspectors, &c., shall be appointed by the canal board, and shall hold their offices for one year; but may be removed at any time by such board.

Power of  
auditor.

RES. No. 16. The auditor, when the canal board is not in session, shall also have power to remove any of the said collectors and weigh-masters, and their assistants and inspectors, &c., and shall report his reasons therefor to the canal board at their next meeting; and he shall also have the power to fill the vacancy occasioned by such removal until the action of the board.

## 3. IN RELATION TO SUPERINTENDENTS AND THEIR EMPLOYEES.

To pay  
money  
when he  
takes  
receipt.

RES. No. 17. No superintendent of repairs shall under any circumstances whatever, take a receipt for labor done, services performed or materials furnished for the canals, where the money shall not be actually paid.

To give  
personal  
attention.

RES. No. 18. The several superintendents of canal repairs are required to give their personal and constant attention to the duties of their office.

To settle  
every two  
months.

RES. No. 19. Each superintendent shall, as far as practicable, settle all his accounts once in two months, taking receipts only for such payments as shall have been actually made; and he shall furnish the commissioner, having charge of that division of the canals on which his section is located, with a separate abstract of the accounts unpaid [a copy of which shall be sent to the canal department, with the accounts of the superin-

tendent,] and pay the same immediately after receiving his next advance, if then due.

RES. No. 20. Every superintendent shall open an account as superintendent, and distinct from his individual concerns, with some bank, in which, from time to time, shall be deposited the money received from the auditor; and he shall immediately inform the auditor, and the commissioner in charge, what bank he has selected for keeping his official account, and the bank so selected shall not be changed without their consent. He shall cause his bank-book to be written up as often as once in each month, and at all times when he shall apply to such commissioner to have his accounts certified; and he shall at all times, on request, exhibit his bank-book to such commissioner, who may at any time examine the official account of such superintendent at the bank.

To keep a bank account as superintendent.

RES. No. 21. No superintendent or foreman, or other person employed to take charge of any work on the canals, or officer on the canals, shall furnish any teams, boats, carriages, materials or other thing belonging to himself, for the use of the public, or of any canal; or employ or contract for the same when owned by any member of his family, or by any foreman or lock-tender; or employ any member of his family on the canal; or employ any teams, carriages, boats, materials or other thing belonging to the public for any private use or purpose.

Not to furnish any teams of his own, or employ those belonging to the public for private use.

RES. No. 22. And no officer on the canals, or holding any appointment under the canal commissioners or any of them, or under any superintendent, shall either directly or indirectly, be interested in any contract for labor, materials or other thing connected with the canals, and shall not, either directly or indirectly, derive any benefit from the annual expenditures on the canals beyond his established compensation.

Not to be interested in contracts, etc

RES. No. 23. No superintendent of repairs, clerk of a superintendent, foreman or overseer of laborers, shall, in any way, be interested in boarding laborers on the canals.

Not to board laborers.

RES. No. 24. No superintendent of repairs shall sell to any lock-tender, foreman or laborer upon the canals, any articles of property of any kind whatsoever.

Nor sell to laborers.

RES. No. 25. No lock-tender on the canals shall keep or in any way be interested in any inn, tavern or grocery, nor sell or be interested in the sale of any articles of property whatsoever, to any person navigating or traveling on the canals.

Lock-tenders not to sell goods.

RES. No. 26. That it is the duty of every superintendent of repairs and of all persons in his employ, to assist floats whose progress is obstructed by bars or low water in a canal, and to assist in the unloading of any sunken boat which obstructs or which threatens to obstruct the navigation of a canal; and the expense of any such assistance shall be forthwith paid to the superintendent, and the moneys received therefor accounted for by him to the state, in his monthly abstract; and neither the float or cargo shall be allowed to proceed any further until such expense is paid, excepting, however, that no charge shall

Superintendent to assist boats.

be made or required to be paid for assisting floats whose progress is obstructed by bars or low water, and whose draught of water, when thus obstructed, does not exceed the limits prescribed by the regulations of the canal board.

Bank not  
to advance  
on ac-  
count.

RES. No. 27. No superintendent of repairs will be allowed to keep his official account at a bank which shall advance to him money beyond the amount for which the bank shall have advice from the canal department that the superintendent's draft on the auditor will be paid.

As to  
repair  
contracts.

RES. No. 28. It is the duty of the superintendents of repairs to supervise and superintend, under the directions of the canal commissioners, the execution of the contracts for repairs of the canals within their respective superintendencies, designated in the resolutions of appointment, and generally to do and perform all such services in relation thereto, as may be required of or enjoined upon them, and also to examine and ascertain whether the several repair contractors have and do execute and perform all and singular the conditions, provisions and obligations of their several contracts; and to report all deficiencies and delinquencies to their respective commissioners in charge, and to the auditor of the canal department as often as they may deem it necessary to do so, and as often as they may be required by any resolution of this board, or by the auditor of the canal department.

Superin-  
tendents  
to traverse  
line twice  
a month  
and ascer-  
tain depth  
of water.

RES. No. 29. It is the duty of the said superintendents to traverse the whole line of the canal under their charge, twice in each month, to examine and ascertain the depth of water on each of the levels, on such part of the canal, and report the same to the commissioner in charge, and to the auditor of the canal department, once in each month during the season of navigation; and also whether any more water is taken into any levels on either of the canals than will be sufficient to supply such levels with water during the days of the greatest business; and also to supply any other level of the canal, dependent for a supply of water upon such level; and also whether the several reservoirs and feeders under their charge are well and properly attended to, and the waters therein preserved for the purposes of navigation.

To sue for  
penalties.

RES. No. 30. It is also the duty of the said superintendents to give their particular attention to the provisions of law for the protection and maintenance of the canals of this state, contained in article 9, title 9, part 1 of the Revised Statutes of this state, and they are hereby authorized, empowered and directed to prosecute, in the name of the people of this state, for all penalties incurred for a violation of any of the provisions of the said article.

To enforce  
chapter  
213 of 1860.  
See § 600.

RES. No. 31. The said superintendents must give their special attention to the injunctions of the fifth section of the act chapter 213, of the Laws of 1860, and in cases of the violation of the provisions of the said section coming to their knowledge, it will be their duty to report the same to the com.

missioner in charge, and to the auditor or the canal department.

[That this board will forthwith remove any superintendent of repairs who shall willfully neglect to comply with the provisions of chapter 52 of the Laws of 1853, requiring a publication or filing of a monthly abstract of his official disbursements; and in case said abstract shall be filed instead of published, such superintendent shall state in his certificate transmitted to the auditor, under section 4 of said act, that he is satisfied, upon a careful examination, that no newspaper in the counties through which his section passes will publish said abstract for the prices allowed by law.<sup>1</sup>]

To publish or file abstract monthly. See § 638.

#### 4. IN RELATION TO WEIGH-MASTERS.

RES. No. 32. When a weigh-master is at his lock, he, and not his assistant, shall affix his name to all clearances, certificates and papers *requiring such authentication*; and that in his absence from his lock, his assistant may affix his own name in lieu of that of the weigh-master, with the addition of these words: "Assistant, W. M., absent."

Weigh-master to sign his name.

RES. No. 33. Every assistant of a weigh-master shall, before he enters on his duties, take and subscribe an oath or affirmation that he will faithfully discharge the duties of assistant weigh-master, according to the best of his ability; which oath or affirmation may be taken before any officer authorized to administer oaths, and shall be filed in the canal department. Upon the oath or affirmation of any assistant, who shall be authorized by a weigh-master to perform the duties of weigh-master in his absence, the substance of such authority shall be indorsed by the weigh-master, before the same is filed in the canal department.

Authority to assistant "duly authorized," to be indorsed on his oath.

RES. No. 34. The weigh-masters and their assistants, at Albany, West Troy, Utica, Syracuse, Rochester and Watford, are authorized and required to examine canal boats and their cargoes, under the direction of the collectors.

Weigh-masters to act as inspectors.

RES. No. 35. Every weigh-master shall also keep in his office an alphabetical register, in which he shall enter the name of every boat weighed at his weigh-lock, the date when weighed, the light weight of the boat, and the measure of the water in the boat at the time of such weighing, and shall send to every other weigh-master, weekly, a list of all boats so weighed light, ending respectively on the 7th, 14th, 22d and last days of each month, and after such form as shall be prescribed by the auditor of the canal department; which list shall be copied into their register of light weights immediately after its receipt.

Register of light weights.

<sup>1</sup> Adopted May 22, 1872. As to keeping the tow-path of the Erie and Champlain canals clear to the width of 14 feet, see regulation No. 84, *ante*.

The duties of assistant weigh-masters shall be performed by them under the rules and direction of the weigh-masters respectively, whose assistants they are, and that it shall be the duty of the weigh-masters to report any insubordination, neglect of duty, or misconduct in office of such assistant weigh-master to the auditor, who, if satisfied of the truth of such charge, may suspend such assistant until the next meeting of the board, and appoint another in the mean time to perform the duties of said office until the action of the board thereon.

Weigh-masters authorized to administer oaths. Certain penalties reduced.

Section 15, page 318, of Laws of 1847, authorizes weigh-masters to administer oaths in all cases connected with their duties.

RES. No 36. Pursuant to section 5, of chapter 451, of the Session Laws of 1837, which authorizes the canal board to modify or reduce any of the penalties imposed by article seven of chapter nine, title nine, of the first part of the Revised Statutes, that the penalties imposed by sundry sections of the article referred to, be reduced as follows, viz.:

Penalty imposed by section No. 119, from			\$25	to	\$10
"	"	"	124,	25	10
"	"	"	130,	25	10
"	"	"	143,	25	15
"	"	"	147,	25	10
"	"	"	159,	25	10
"	"	"	160,	25	5
"	"	"	162,	25	10
"	"	"	163,	25	10

#### SPECIAL REGULATIONS RELATIVE TO LUMBER.

RES. No. 38. The collectors of canal tolls at Rochester, Syracuse and Utica, where a boat having on board sawed lumber or cord wood, which has been cleared either by count, measurement or *weight*, is unloaded at either of said offices, and the collectors of canal tolls at Waterford, West Troy and Albany, in every instance where a boat having on board sawed lumber or cord wood, shall pass into the Hudson river, or where the cargo is unloaded at either of said offices, which has not been measured or counted by either of them, shall require the master or owner to produce the certificate of a city inspector or measurer before a new clearance is granted to said boat, stating the count or measurement of the quantity of each kind of lumber in feet, and the number of cords of wood of which said cargo was composed; and every such inspector or measurer may give his certificate upon his own personal inspection of the count or measurement; or he may give his certificate upon the written statement of the owner or consignee of said wood or lumber, which statement shall, in all cases, be accompanied

<sup>1</sup> Adopted March 14, 1838. The references to "Sections," are to the 1st ed. R. S.



with an affidavit of the measurement or count from a person of a good character, and a competent measurer of lumber or wood, in the following form, viz.:

I,            of           , do swear that I have measured the entire cargo of the boat            of           , of which            is master, and that the following is a true statement or bill of the number of pieces, and the quantity in board measure, where the pieces were not less than one inch thick, and the number of pieces and the quantity in surface measure, where the pieces were less than one inch thick, of each kind of lumber comprising said cargo, viz.:

[Here give the quantity of *each kind* of lumber in feet.]

And I do further swear, that where the            were not of uniform length or width, I measured each piece, and have given the true contents of the whole, having made no deduction for defective lumber.

Sworn before me, this            }  
day of           , 187 . }

And the collector may also require the master of the boat to add his oath to the certificate of the lumber inspector, as follows:

I, A B, master of the boat           , of           , do swear, that no part of the lumber embraced in the bill of lading and clearance was taken from said boat, from the time said clearance and bill of lading were given to me, until the same was unloaded at           , on the            day of           , 187 .

[If lumber has been previously unloaded from same cargo, state the *kind*, quantity, and place of unloading.]

Sworn before me, this            }  
day of           , 187 . }

RES. No. 39. And the certificate of the said city inspector shall certify on what evidence his certificate is given, and such certificate and evidence shall be carefully preserved in the collector's office; and in every instance where, in the opinion of the collector, this certificate cannot be furnished, or where he shall have any doubts that such certificate includes the whole amount of said cargo, he shall administer an oath to the master or owner of the boat, in relation to the correctness of his clearance.

RES. No. 40. The bill of lading of each boat loaded with lumber, and *destined to New York*, must be verified in the following manner, to entitle such boat to a clearance, viz.:

1. Where the master does not superintend the loading of the boat, the shipper, or some person who has had such superintendence, must swear to the correctness of the bill of lading, as follows:

I,           , of the town of           , do swear that I superintended the loading of the boat           , of           , of which            is master, at           , and that the above is a true bill of

lading of said boat, and gives the number of feet in board measure, where the boards are not less than one inch thick, and the number of feet in surface measure, where the boards are less than one inch thick; and that no articles of freight of any kind, other than those specified in said bill, were put on board of said boat up to the time that                      took charge of the boat as master.

Sworn before me, this                      }  
day of                      , 187 . }

The master of the boat will be required to make the following oath:

I, A. B, master of the boat                      , of                      , do swear, that no addition has been made to the cargo of said boat since the bill of lading and affidavit annexed were delivered to me, and, according to the best of my knowledge and belief, the said bill represents truly all the freight on board of said boat.

Sworn before me, this                      }  
day of                      , 187 . }

2. Where the master superintends the loading of the boat, the bill of lading may be signed by the shipper, and be verified by the oath of the master, as follows:

I,                      , master of the boat                      , of                      , do swear that I superintended the loading of the boat                      , of                      , at                      , and that the above is a true bill of lading of said boat, and gives the number of feet in board measure, where the boards are not less than one inch thick, and the number of feet in surface measure, where the boards are less than one inch thick; and that no articles of freight of any kind are on board of said boat, other than those specified in the bill of lading now presented to obtain a clearance.

Sworn before me, this                      }  
day of                      , 187 . }

**RES. No. 41.** Each boat destined to New York shall be furnished with a duplicate of its bill of lading, which must be left with the collector at the place where it enters the Hudson river.

**RES. No. 42.** In the measurement of timber to be floated on the canals, bark adhering to the wood, and refuse stuff, are to be estimated as forming part of the timber, and to be rated accordingly; and the inspectors are instructed to make their measurements according to these directions.

**RES. No. 43.** Whenever cord wood or sawed lumber shall be delivered to more than one owner or consignee, from the same cargo, the master of such boat shall deliver to a canal boat inspector a statement, from each owner or consignee, of the quantity in feet of each kind of lumber, and the number of cords of wood received by him from such cargo, and such statement shall be accompanied by an affidavit such as is first above prescribed, omitting the words "entire cargo," and sub-

stituting therefor "all of that portion of said cargo delivered to (here insert the owner or consignee's name)," and every master who shall violate the provisions of this regulation shall forfeit the sum of ten dollars.

**Res. No. 44.** Whenever a cargo of cord wood or sawed lumber, or any portion thereof, is unloaded at a place where there is no collector, the master of said boat shall attend to the measurement of said lumber or wood when it is delivered, and it shall be the duty of said master to deliver to the nearest collector, or the collector next in order on his passage, a statement showing the kind or kinds and quantity of all the lumber in feet, and the number of all the cords of wood so unloaded, which statement shall be sworn to before the collector to whom it is delivered; and every master who shall violate the provisions of this regulation shall forfeit the sum of ten dollars.


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## FORM OF BILLS OF LADING AND CLEARANCE.

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### BILLS OF LADING.

[Coll'r No. 2, 1871.]

 The collector will give the following form for a bill of lading, and the instructions for making it out the master of each boat, which master should preserve it as a guide for him in making out his shipping bill.

Part 1st, Chap. IX, Title IX, Art. 7, Sec. No. 121, Rev. Stat. (canal laws), as amended by the laws of 1859, ch. 16, requires that the master of a boat conveying property on the canals, shall have made out, and shall exhibit a just and true account, or bill of lading, of all the property constituting the lading of this boat; and that such bill of lading shall be signed by the master of the boat, and also by the consignor of the property. This bill of lading is to contain:

1st. The name of each place at which any of the property upon the bill of lading was shipped and the name of the place for which it is intended to be cleared.

2d. A statement of the names, description and weight of all the articles upon the bill of lading on which toll is charged by the ton. A statement of the number of articles on which toll is charged by the number. A statement of the feet of articles on which toll is charged by the foot.

3d. A specification of the weight, number of measure of each article, where different rates of toll are chargeable upon the different articles upon the bill of lading.

This bill of lading is to be given to the collector, and from it he makes out the clearance, and returns the bill of lading to the master, who is to exhibit it to all the collectors whose

offices are passed by his boat. If in the course of his passage, any other articles are taken on board, the master must ascertain the number or weight of such articles and enter them on the bill of lading.]

The following is given as the form of a

#### BILL OF LADING.

*A just and true account or Bill of Lading of all the articles shipped on board of the Canal Boat of whereof is the Master for this present passage, viz.:*

When and Where Shipped.	Description of Articles.	Short Weight. Pounds.	Aggregate Weight—Pounds.	Where articles are to be left.

*Dated at this day of 187.*  
(Signed)

*Master.*  
*Consignor.*

#### CLEARANCE.

COLLECTOR'S OFFICE } 187.

No.—

*Cleared Boat of whereof is Master, for this present passage, laden as follows:*

*This Boat drew feet and inches of water when cleared.* *Collector.*

Cargo.	Where from.	Where bound.	Weight, lbs.	Miles.	Rates.	Tolls, Dols.	Cts.

## FORM AND DIRECTIONS

FOR SUPERINTENDENTS' MONTHLY ABSTRACT  
OF DISBURSEMENTS,

Prescribed by the Auditor of the Canal Department in 1873, under the provisions of chapter fifty-two of the Laws of eighteen hundred and fifty-three (§§ 638-642 of this Manual), for the publication or filing, by canal superintendents, of monthly abstracts of official disbursements.

*Abstract of disbursements made by* *Superin-*  
*tendent of repairs for section* *of the*  
*during the month of* 187 . *canal,*  
*Dated* N. Y. 187 .

1. FOR LABOR.\*

To whom paid.	No. of days.	Price per day.	Total paid.

\* DIRECTIONS.

Make this a complete abstract of every payment of money for which a voucher is taken, made during the month, without reference to the dates when the labor was performed or materials furnished.

This list should include the name of every person to whom payment is made for services of any kind, on or for the section.

## 2. FOR TOOLS AND MATERIALS. \*

To whom paid.	Kind and quantity.	Price.	Amount.
Total amount of Abstract .....			\$

\* Where a bill paid is less than \$10, the quantity and price need not be stated. Insert simply the name, the kind of materials and the amount paid.

For bills over \$10, where the items do not exceed three, insert the quantity, price and amount of each item.

When a bill embraces more than three items, insert the kind, quantity, price and sum paid for the three articles in the bill of the largest amount, and then add "For Sundries," for the remainder of the bill.

To be verified by oath of Superintendent.

STATE OF NEW YORK, }  
COUNTY, } ss.:

, being duly sworn, says, that he is superintendent of repairs of section of the canal, and that the foregoing abstract of official disbursements, made by him, pursuant to chapter 52, of the Laws of 1853, is in all respects a just and true account of all the moneys paid out by him as such superintendent on and for said repair section, during the month of 187 .

Subscribed and sworn before me, }  
this day of 187 . }

# RATES OF TOLL FOR THE YEAR 1852,

Established by the Canal Board on persons and property transported on the canals of this state, and referred to in the amendment, adopted in 1854, to the Constitution, Art. VII, § 3, as follows:

“The rates of toll on persons and property transported on the canals shall not be reduced below those for the year one thousand eight hundred and fifty-two, except by the canal board, with the concurrence of the legislature.”

## TOLL SHEET, 1852.

### *Provisions, etc.*

	cts.	m.	fr.
1. On salted beef, butter, tallow, beer, cider and vinegar, per 1,000 pounds per mile.....	0	3	0
2. On salted pork, bacon, lard and oil, grease and cheese, per 1,000 pounds per mile.....	0	1	5
3. On salted fish and fish in brine, per 1,000 pounds per mile.....	0	4	0
4. On bran and ship stuff, and oil cake or oil meal, in bulk, per 1,000 pounds per mile.....	0	2	0

### *Iron, Minerals, Ores, etc.*

5. On salt, manufactured in this state, per 1,000 pounds per mile.....	0	1	0
6. On foreign salt, per 1,000 pounds per mile.....	0	5	0
7. On gypsum, the product of this state, per 1,000 pounds per mile.....	0	1	0
8. On foreign gypsum, per 1,000 pounds per mile.....	0	3	0
9. On bloom, scrap and pig iron, broken castings, gas pipes and water pipes, per 1,000 pounds per mile.....	0	2	0
10. On brick, sand, lime, clay, earth, manure, iron ore, pig and smelted copper, and stone for the manufacture of lime, per 1,000 pounds per mile,	0	1	0
11. On leached ashes and bones for manure, per 1,000 pounds per mile....	0	0	5
12. On pot and pearl ashes, window glass, barilla and bleaching powders, kelp, soda ash, and copperas and manganese, per 1,000 pounds per mile,	0	4	5
13. On mineral coal and charcoal, per 1,000 pounds per mile.....	0	0	0
14. On stoves, iron car wheels and car axles, bed plates for steam engines, plough castings, and all other iron castings, except machines and the parts thereof, per 1,000 pounds per mile.....	0	3	0
15. On bar and pig lead, going toward tide-water, and copper ore, per 1,000 pounds per mile.....	0	0	5
16. On stove pipe and furniture for stoves, not cast iron, per 1,000 pounds per mile.....	0	6	0

### *Furs, Peltry, Skins, etc.*

17. On furs and the skins of animals producing furs, per 1,000 pounds per mile.....	1	0	0
18. On deer, buffalo and moose skins, per 1,000 pounds per mile.....	0	5	0
19. On sheep skins, per 1,000 pounds per mile.....	0	4	0

	cts.	m.	fr.
20. On green hides of domestic animals of the United States, per 1,000 pounds per mile .....	0	3	0
21. On imported raw hides of domestic and other animals, per 1,000 pounds per mile.....	0	5	0

*Furniture, etc.*

22. On household furniture, accompanied by and actually belonging to families emigrating, per 1,000 pounds per mile.....	0	3	0
23. On carts, wagons, sleighs, plows and mechanics' tools necessary for the owner's individual use, when accompanied by the owner, emigrating for the purpose of settlement, per 1,000 pounds per mile.....	0	3	0

*Stone, Slate, etc.*

24. On tile for roofing and stoneware, per 1,000 pounds per mile .....	0	4	0
25. On slate, all stone wrought or partly wrought, fire-proof cement, and drain tile, per 1,000 pounds per mile .....	0	2	0
26. On unwrought stone, per 1,000 pounds per mile.....	0	1	5

*Lumber, Wood, etc.*

27. On timber, squared and round, per 100 cubic feet per mile, if carried in boats.....	0	4	0
28. On the same, if carried in rafts, per 100 cubic feet per mile.....	1	0	0
29. On the same, if cleared after the 1st of June, and arriving before the 15th of August, inclusive, per 100 cubic feet per mile.....	0	7	0
30. On lumber carried in boats, when weighed, per 1,000 pounds per mile, viz.:			
1. On white pine, white-wood, bass-wood and cedar .....	0	1	5
2. On oak, hickory, beech, sycamore and black walnut.....	0	1	0
3. On spruce, maple, ash and elm .....	0	1	2
4. On cherry.....	0	1	4
5. On hemlock.....	0	0	6
6. On boards, plank, scantling and sawed timber, reduced to inch measure, all kinds of red cedar, cedar posts, estimating that a cord, after deducting for openings, will contain one thousand feet, and all siding, lath, and other sawed stuff, less than one inch thick, carried in boats (except such as is enumerated in rates number 32 and 41), per 1,000 feet per mile, when not weighed.....	0	4	0
7. On hemlock, per 1,000 feet per mile, when not weighed.....	0	2	5
8. On sub. 6 and 7, if transported in rafts, per 1,000 feet per mile .....	2	0	0
31. On mahogany (except veneering), reduced to inch measure, per 1,000 feet per mile.....	1	5	0
32. On sawed lath, of less than ten feet in length, split lath, hoop poles, handspikes, rowing oars, broom handles, spokes, hubs, treenails, fel-lies, boat knees, plane stocks, pickets for fences, and stuff manufactured or partly manufactured, for chairs or bedsteads, hop poles, brush handles, brush backs, looking-glass backs, gun stocks, plow beams and plow handles, per 1,000 pounds per mile.....	0	2	0
33. On stoves and heading, empty barrels and casks, and ship knees, transported in boats, per 1,000 pounds per mile.....	0	1	0
34. On the same, if transported in rafts, per 1,000 pounds per mile .....	0	5	0
35. On shingles, carried in boats, per 1,000 pounds per mile .....	0	1	5
36. On the same, if conveyed in rafts, per M per mile .....	0	4	0



	cts.	m.	fr.
37. On split posts (not exceeding ten feet in length), and rails for fences (not exceeding fourteen feet in length), per M per mile, carried in boats..	2	0	0
38. On the same, if conveyed in rafts, per M per mile .....	8	0	0
39. On wood for fuel (except such as may be used in the manufacture of salt, which shall be exempt from toll), and tan bark, per cord, per mile.....	0	5	0
40. On the same, if transported in rafts, per cord, per mile.....	2	0	0
41. On sawed stuff for window blinds, not exceeding one-fourth of an inch in thickness, and window shades and blinds, per 1,000 pounds per mile .....	0	5	0

*Agricultural Productions, etc.*

42. On domestic distilled spirits going toward tide-water, per 1,000 pounds per mile.....	0	3	0
43. On wood, per 1,000 pounds per mile .....	0	4	0
44. On cotton, per 1,000 pounds per mile .....	0	1	0
45. On live cattle, sheep, hogs, horns, hoofs and bones, per 1,000 pounds per mile.....	0	2	0
46. On horses (except those used exclusively for towing boats or floats), per 1,000 pounds per mile.....	0	3	0
47. On horses used exclusively for towing boats or other floats, exempt from toll.....			
48. On rags and junk, per 1,000 pounds per mile .....	0	3	0
49. On manilla, per 1,000 pounds per mile.....	0	4	0
50. On hemp and tobacco going toward tide-water, per 1,000 pounds per mile .....	0	1	0
51. On tobacco, going from tide-water, per 1,000 pounds per mile .....	0	4	0
52. On pressed broom corn, per 1,000 pounds per mile.....	0	2	0
53. On pressed hay, per 1,000 pounds per mile.....	0	1	0
54. On corn, corn meal and oats, per 1,000 pounds per mile.....	0	2	0
55. On wheat, flour, barley, rye, peas and beans, per 1,000 pounds per mile,	0	3	0
56. On flour starting and going from tide-water, per 1,000 pounds per mile,	0	1	0
57. On potatoes, apples, onions, turnips, all other esculent roots, and ice, per 1,000 pounds per mile.....	0	1	0
58. On all other agricultural productions of the United States, not particularly specified, per 1,000 pounds per mile.....	0	4	0

*Merchandise.*

59. On barytes and veneering, per 1,000 pounds per mile .....	0	8	0
60. On sugar, molasses, coffee, iron in bars, bundles and sheets, steel, nail rods, boiler iron, nails and spikes, horse shoes, crockery and glass-ware, tin, rosin, tar, pitch, turpentine, oil, anchors, chain cables, oakum, mineral water, oysters and clams, dye woods, and all other merchandise not enumerated, per 1,000 pounds per mile.....	0	4	0
61. On railroad iron and railroad chairs, per 1,000 pounds per mile .....	0	1	5
62. On threshing, mowing and reaping machines, fanning mills, plows, harrows, and drill harrows, used for agricultural purposes, per 1,000 pounds per mile.....	0	4	0

*Articles not Enumerated, etc.*

63. On all articles not enumerated or excepted, per 1,000 pounds per mile,	0	4	0
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*Boats and Passengers.*

	cts.	m.	fr.
64. On boats <i>used chiefly</i> for the transportation of persons navigating the canals, per mile.....	4	0	0
65. On the same, if they elect to commute for tolls upon passengers, per mile .....	3	4	0
66. On boats <i>used chiefly</i> for the transportation of property, per mile .....	2	0	0
67. On the same, if they elect to commute for tolls upon passengers, per mile .....	2	3	0
68. On all persons over ten years of age, per mile.....	0	0	5

# TABLE

## OF THE

### RATES OF TOLL

FOR THE YEARS

1852, 1859, 1868, 1869 AND 1870.

[NOTE.—In consequence of the difference in the arrangement and classification of the Toll Sheets for the years above named, it has been found impossible to give the corresponding rates on *every* article.]

#### A.

	1852.	1859.	1868.	1869.	1860.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
Acid, Sulphuric .....			0 2 0	0 2 0	0 2 0
Agricultural Implements .....	0 3 0		0 2 0	0 1 5	0 1 5
Articles not enumerated, going toward tide-water .....	0 4 0	0 2 0	0 3 0	0 3 0	0 2 0
On the same, going from tide-water .....		0 2 0	0 1 5	0 1 5	0 1 5
Agricultural productions of the United States, not particularly specified .....	0 4 0	0 2 0	0 3 0	0 3 0	0 2 0
Apples .....	0 1 0	0 1 0	0 2 0	0 2 0	0 2 0
Ashes, pot and pearl .....	0 4 0	0 2 0	0 2 0	0 2 0	0 2 0
Ashes, leached .....	0 0 5	0 0 5	0 0 5	0 0 5	0 0 5

#### B.

Bacon .....	0 1 5	0 1 0	0 1 0	0 1 0	0 1 0
Barley .....	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5
Barrels, empty, transported in boats .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Barrels, empty, transported in rafts .....	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0
Bars of iron .....		0 1 0	0 1 5	0 1 5	0 1 5
Barytes .....	0 8 0	0 3 0	0 3 0	0 1 5	0 1 5
Beans .....	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5
Bed plates for steam engines (cast iron) .....	0 3 0	0 2 0	0 2 0		
Bedstead stuff (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Beef, salted .....	0 3 0	0 1 5	0 2 0	0 2 0	0 1 5
Bloom iron .....	0 2 0	0 2 0	0 2 0	0 1 5	0 0 5
Boat knees (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Boats used chiefly for transportation of passengers upon all canals, per mile .....	4 0 0	4 0 0	4 0 0	4 0 0	4 0 0
On same, if they elect to commute for tolls upon passengers .....	3 0 0	3 0 0	3 0 0	3 0 0	3 0 0
Boats used chiefly for transportation of property, per mile .....	2 0 0	2 0 0	2 0 0	2 0 0	2 0 0
On the same, if they elect to commute for tolls upon passengers .....	2 3 0	2 3 0	2 3 0	2 3 0	2 3 0
Boats registered before July 1st, 1862, whose bows do not conform to regulation No. 40, per mile .....			3 0 0	3 0 0	3 0 0
Bolts, stave, if carried in boats .....		0 1 0	0 1 5	0 1 5	0 1 0
Bolts, stave, if carried in rafts .....		0 5 0	0 5 0	0 5 0	0 5 0
Bones for manure .....	0 0 5	0 0 5	0 1 0	0 1 0	0 0 5
Bones other than for manure .....	0 2 0	0 2 0	0 2 0	0 1 0	0 0 5
Boxes, stuff for (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Bran .....	0 2 0	0 2 0	0 2 0	0 2 0	0 1 0
Brick .....	0 1 0	0 0 5	0 1 0	0 1 0	0 1 0
Broom handles (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0

	1852.	1859.	1868.	1869.	1870.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
Brush hacks (see <i>Lumber No. 3</i> )	0 2 0	0 2 0	0 2 3	0 2 3	0 2 0
Brush handles (see <i>Lumber No. 3</i> )	0 2 0	0 2 0	0 2 3	0 2 3	0 2 0
Buffalo skins	0 5 0	0 5 0	0 3 0	0 3 0	0 2 5
Butter	0 3 0	0 1 0	0 2 0	0 2 0	0 2 0
Butts, stave, if carried in boats	0 1 0	0 1 0	0 1 5	0 1 5	0 1 0
Butts, stave, if carried in rafts	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0

## C.

Cabinet ware	0 4 0	0 3 0	0 1 5	0 1 5
Carboys	0 2 0	0 2 0	0 2 0	0 2 0
Carts	0 3 0	0 2 0	0 2 0	0 2 0
Car axles	0 3 0	0 2 0	0 2 0	0 1 0
Car wheels (iron)	0 3 0	0 2 0	0 2 0	0 0 5
Carriages and sleighs	0 4 0	0 2 0	0 2 0	0 2 0
Casks, empty, transported in boats	0 1 0	0 1 0	0 1 0	0 1 0
Casks, empty, transported in rafts	0 5 0	0 5 0	0 5 0	0 5 0
Castings, all iron casting except machines and parts thereof	0 3 0	0 2 0	0 3 0	0 1 5
Castings, broken	0 2 0	0 2 0	0 2 0	0 1 5
Cattle alive	0 2 0	0 2 0	0 2 0	0 2 0
Cedar posts (see <i>Lumber No. 2</i> ), per 1,000 feet, per mile	0 5 0	0 6 5	0 6 5	0 5 5
Cedar, red (see <i>Lumber No. 2</i> ), per 1,000 feet, per mile	0 5 0	0 6 5	0 6 5	0 5 5
Cement, fire-proof	0 2 0	0 2 0	0 2 0	0 1 5
Chairs	0 4 0	0 3 0		
Chair stuff (see <i>Lumber No. 3</i> )	0 2 0	0 2 3	0 2 3	0 2 0
Charcoal	0 0 5	0 0 5	0 0 5	0 0 5
Cheese	0 1 5	0 1 0	0 2 0	0 1 5
Cider	0 3 0	0 2 0	0 2 0	0 1 5
Clay	0 1 0	0 1 0	0 1 0	0 1 0
Clover seed	0 4 0	0 4 0	0 4 0	0 2 0
Coal, mineral or anthracite	0 0 5	0 1 0	0 1 0	0 0 5
Coal, bituminous		0 1 0	0 1 0	0 0 5
Coal, bituminous, carried to, and delivered at tide-water		0 0 5	0 0 5	0 0 5
Coal oil		0 1 0	0 1 0	0 0 5
Coffee	0 4 0	0 1 0	0 1 5	0 1 0
Copper ore	0 0 5	0 0 5	0 1 0	0 1 0
Copper, pig and smelted	0 1 0	0 1 0	0 1 0	0 1 0
Corn	0 2 0	0 2 0	0 2 5	0 1 5
Corn meal	0 2 0	0 2 0	0 2 5	0 1 5
Cotton	0 1 0	0 1 0	0 1 0	0 1 0
Crockery	0 4 0	0 1 0	0 1 5	0 1 0

## D.

Deer skins	0 5 0	0 5 0	0 3 0	0 3 0	0 2 5
Demijohns		0 4 0	0 4 0		
Domestic distilled spirits	0 3 0	0 2 0	0 2 0	0 2 0	0 1 5
Domestic cottons		0 2 0	0 2 0	0 1 5	0 1 5
Domestic woollens		0 2 0	0 2 0	0 1 5	0 1 5
Dried fruit		0 4 0	0 4 0		

## E.

Earth	0 1 0	0 1 0	0 1 0	0 0 5	0 0 5
Esculent roots	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Enameled ware, flint					

## F.

Fellies (see <i>Lumber No. 3</i> )		0 2 0	0 2 3	0 2 3	0 2 0
Fire-proof cement	0 2 0	0 2 0	0 2 0	0 1 5	0 1 0
Fire brick			0 1 0	0 1 0	0 1 0
Flax seed		0 2 0	0 2 0	0 2 0	0 2 0
Flint enameled ware			0 1 5		
Flour	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5
Furniture, cabinet ware and chairs	0 4 0	0 4 0	0 3 0	0 1 5	0 1 5
Furniture for stoves, not cast iron	0 6 0	0 6 0	0 3 0	0 1 5	0 1 5
Furs, and skins of animals producing furs	1 0 0	1 0 0	0 3 0	0 3 0	0 2 5

# RATES OF TOLL.

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## G.

	1852.	1859.	1868.	1869.	1870.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
Gas pipes .....	0 2 0	0 2 0	0 1 5	0 1 5	0 1 0
Glass ware .....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5
Grass seed .....		0 4 0	0 4 0	0 4 0	0 2 0
Grease .....	0 1 5	0 1 5	0 1 5	0 1 5	0 1 5
Gunstocks (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Gypsum, the product of this state, ground and unground .....	0 1 0	0 1 0	0 1 5	0 1 0	0 1 0
Gypsum, foreign, and the product of other states, ground and unground .....	0 3 0	0 3 0	0 2 5	0 1 0	0 1 0
Gypsum, calcined .....			0 2 0	0 1 0	0 1 0

## H.

Hand spikes (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Hay, pressed .....	0 1 0	0 1 0	0 1 0	0 1 0	0 0 5
Heading, undressed, transported in boats .....		0 1 0	0 1 5	0 1 5	0 1 0
Heading, dressed or partly dressed .....		0 1 8	0 1 5	0 1 5	0 1 0
Heading, transported in rafts .....		0 5 0	0 5 0	0 5 0	0 5 0
Hemp, going toward tide-water .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Hides, green, of domestic animals of the United States .....	0 3 0	0 3 0	0 3 0	0 1 5	0 1 5
Hides, raw, imported, of domestic and other animals .....	0 5 0	0 3 0	0 3 0	0 1 5	0 1 5
Hogs alive .....	0 2 0	0 2 0	0 2 0	0 2 0	0 2 0
Hops .....			0 2 0	0 2 0	0 2 0
Hop poles (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Hop poles transported in rafts .....			0 5 0	0 5 0	0 5 0
Hoop poles (see <i>Lumber No. 3</i> ) .....		0 5 0	0 2 3	0 2 3	0 2 0
Hoop poles transported in rafts .....			0 5 0	0 5 0	0 5 0
Hoops, rived .....			0 2 3	0 2 3	0 2 0
Horses .....	0 3 0	0 3 0	0 3 0	0 3 0	0 3 0
Horses, used exclusively for towing boats and other floats, exempt from toll.					
Horse shoes .....	0 4 0	0 1 0	0 1 5	0 1 5	0 0 5
Hubs (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0

## I.

Ice .....	0 1 0	0 1 0	0 1 0	0 1 0	0 0 5
Iron in sheets, bars and bundles .....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5
Iron ore .....	0 1 0	0 0 5	0 1 0	0 1 0	0 0 5
*Iron ore, carried to any place within this state, and which has been brought on the Champlain canal to West Troy or Albany, and cleared from one of those points to some place within this state on the Erie or some of the canals west .....			0 0 5	0 0 5	.....
Iron, bloom, scrap and pig .....	0 2 0	0 2 0	0 2 0	0 0 5	0 1 0
Iron, boiler .....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5
Iron, bridge and railing .....		0 1 0	0 1 5	0 1 5	0 1 5
Iron bolts .....		0 2 0	0 2 0	0 1 5	0 1 5
Iron safes .....		0 4 0	0 2 0	0 1 5	0 1 5

## J.

Junk .....	0 3 0	0 3 0	0 3 0	0 1 5	0 1 5
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## L.

Lard .....	0 1 5	0 1 0	0 1 5	0 1 5	0 1 0
Lard oil .....	0 1 5	0 1 0	0 1 5	0 1 5	0 1 0
Last blocks (see <i>Lumber No. 3</i> ) .....			0 2 3	0 2 3	0 2 0
Lath (see <i>Lumber No. 1</i> ) .....		0 1 8	0 2 3	0 2 3	0 2 0
Lath (see <i>Lumber No. 2</i> ) per 1,000 feet, per mile, surface measure .....		0 5 0	0 6 5	0 6 5	0 5 0
Lath (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Lead, pig, going toward tide-water .....	0 0 5	0 0 5	0 1 0	0 0 5	0 0 5
Lead, bar, going toward tide-water .....	0 0 5	0 0 5	0 1 0	0 0 5	0 0 5
Leather .....		0 1 0	0 1 5	0 1 5	0 1 0
Lime, manufactured .....	0 1 0	0 1 0	0 1 5	0 1 5	0 1 0
Lime, water .....		0 1 0	0 1 5	0 1 0	0 1 0
Limestone .....		0 1 0	0 1 0	0 0 5	0 0 5
Looking glasses .....		0 4 0	0 2 0		
Looking glass backs (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0

	1852.	1859.	1868.	1869.	1870.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
<b>LUMBER No. 1.*</b>					
<i>Transported in boats by weight, per 1,000 pounds per mile:</i>					
White pine, whitewood, cherry, bass wood, cedar boards, planks, scantling, and on all sidings, lath and other sawed stuff less than one inch thick (except such as is enumerated in <i>Lumber No. 3</i> ).....			0 2 3	0 2 3	0 2 0
Oak, hickory, beech, sycamore, black walnut, butternut, maple, ash, elm, fir, tamarack, yew and spuce.....			0 1 8	0 1 8	0 1 5
Hemlock.....			0 1 0	0 1 0	0 1 0

<b>LUMBER No. 2.*</b>					
<i>Transported in boats by measurement, per 1,000 feet, per mile:</i>					
Boards, planks, scantling, railroad ties and sawed timber, reduced to inch measure, and all siding, lath and other sawed stuff, less than one inch thick (except such as is enumerated in <i>Lumber No. 3</i> ), tolls computed on surface measure; and all kinds of red cedar, cedar posts, estimated that a cord, after deducting for openings, will contain 1,000 feet.....	0 5 0	0 6 5	0 6 5	0 5 5	
Hemlock, per 1,000 feet per mile, when not weighed.....	0 2 5	0 3 0	0 3 0	0 3 0	
Lumber No. 2, transported in rafts, per 1,000 feet, per mile.....	2 5 0	2 5 0	2 5 0	2 5 0	

<b>LUMBER No. 3.*</b>					
<i>Transported in boats by weight, per 1,000 pounds per mile:</i>					
Sawed lath of less than 10 feet in length, split lath, hoop poles, hand spikes, rowing oars, broom handles, spokes, hubs, tree-nails, fellies, boat and ship knees, plane stocks, pickets for fences, railroad ties, last blocks, stuff, manufactured or partly manufactured, for boxes, chairs and bedsteads, hop poles, brush handles, brush backs, looking-glass backs, gun stocks, plow beams and plow handles.....	0 2 0	0 2 3	0 2 3	0 2 0	
Sawed stuff for window blinds, not exceeding one-fourth of an inch in thickness.....	0 6 0	0 7 0	0 7 0	0 5 5	

## M.

Mahogany.....	1 5 0	1 5 0	0 5 6	0 1 5	0 1 5
Manure.....	0 1 0	0 1 0	0 1 0	0 1 0	0 0 5
Marl.....			0 1 0	0 1 0	0 0 5
Merchandise, non-enumerated.....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5
Molasses.....	0 4 0	0 1 0	0 1 5	0 1 0	0 1 0
Moose skins.....	0 5 0	0 5 0	0 3 0	0 3 0	0 2 5

## N.

Nails.....	0 4 0	0 1 0	0 1 5	0 1 0	0 0 0
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## O.

Oats.....	0 2 0	0 2 0	0 2 5	0 2 5	0 1 5
Oil Cake.....	0 2 0	0 2 0	0 2 0	0 2 0	0 1 5
Oil meal.....	0 2 0	0 2 0	0 2 0	0 2 0	0 1 5
Onions.....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0

P.

	1852.	1859.	1868.	1869.	1870.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
Passengers, over ten years of age, per mile...	0 0 5	0 0 5	0 0 5	0 0 5	0 0 5
Petroleum or earth oil, crude and refined .....	0 0 5	0 0 5	0 0 5	0 0 5	0 0 5
Peas .....	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5
Peat .....	0 1 0	0 1 0	0 1 0	0 1 0	0 0 5
Pickets for fences (see <i>Lumber No. 3</i> ) .....	0 2 0	0 2 3	0 2 3	0 2 3	0 2 0
Pig copper .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Pig iron, going from tide-water .....	0 2 0	0 2 0	0 1 0	0 1 0	0 0 5
Pig iron, going toward tide-water .....	0 2 0	0 2 0	0 1 5	0 1 5	0 1 0
Plane stocks (see <i>Lumber No. 3</i> ) .....	0 2 0	0 2 3	0 2 3	0 2 3	0 2 0
Plaster, calcined, or plaster of paris, going from tide-water .....	0 2 0	0 2 3	0 1 5	0 1 5	0 1 0
Plow beams (see <i>Lumber No. 3</i> ) .....	0 2 0	0 2 3	0 2 3	0 2 3	0 2 0
Plow handles (see <i>Lumber No. 3</i> ) .....	0 2 0	0 2 3	0 2 3	0 2 3	0 2 0
Pork, salted .....	0 1 5	0 1 5	0 2 0	0 2 0	0 1 5
Posts, split and round, not exceeding eight feet in length, carried in boats, per M., per mile .....			3 0 0	3 0 0	2 0 0
Potatoes .....	0 1 0	0 1 0	0 2 0	0 2 0	0 2 0
Powder and gunpowder .....	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0

R.

Rags .....	0 3 0	0 2 0	0 2 0	0 1 5	0 1 5
Railroad chairs .....	0 1 5	0 1 5	0 1 5	0 1 5	0 1 0
Railroad iron .....	0 1 5	0 1 5	0 2 0	0 1 5	0 1 0
Railroad ties (see <i>Lumber Nos. 2 and 3</i> ) .....					
Rails for fences, not exceeding fourteen feet in length, carried in boats, per M., per mile .....	2 0 0	2 0 0	3 0 0	3 0 0	2 0 0
On the same, if carried in rafts, per M., per mile .....	8 0 0	8 0 0	8 0 0	8 0 0	8 0 0
Rice, going from tide-water .....				0 1 0	0 1 0
Rooks, esculent .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Rowing oars (see <i>Lumber No. 3</i> ) .....	0 2 0	0 2 3	0 2 3	0 2 3	0 2 0
Rye .....	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5

S.

Sal soda, going from tide-water .....				0 1 0	0 1 0
Salted fish, going from tide-water .....	0 4 0	0 5 0	0 2 5	0 1 0	0 1 0
Salt, foreign .....	0 5 0	0 1 0	0 1 5	0 2 5	0 2 5
Salt, manufactured in this state .....	0 1 0	0 1 0	0 1 5	0 1 5	0 1 0
Sand .....	0 1 0	0 1 0	0 1 0	0 0 5	0 0 5
Sawed stuff (see <i>Lumber Nos. 2 and 3</i> ) .....		0 0 5	0 1 0	0 1 0	0 0 5
Sawdust .....	0 2 0	0 2 0	0 2 0	0 1 5	0 0 5
Scrap iron .....	0 2 0	0 2 0	0 2 0	0 2 0	0 2 0
Sheep, live .....	0 1 5	0 1 5	0 1 5	0 1 5	0 1 5
Shingles, in boats, per 1000 pounds per mile .....		0 0 5	0 0 5	0 0 5	0 0 5
Shingles, in boats, per M., per mile .....	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0
Shingles, per M., per mile, in rafts .....	0 1 0	0 1 0	0 2 3	0 2 3	0 2 0
Ship knees .....	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0
Ship knees, transported in rafts .....	0 2 0	0 2 0	0 2 0	0 2 0	0 1 5
Ship stuffs .....		0 1 5	0 1 5	0 1 5	0 1 0
Shooks, stave .....	0 4 0	0 4 0	0 4 0	0 4 0	0 4 0
Shrubbery and trees .....	0 1 8	0 2 3	0 2 3	0 2 3	0 2 0
Siding (see <i>Lumber No. 1</i> ) .....					
Siding (see <i>Lumber No. 2</i> ) per 1000 feet surface measure .....	1 5 0	0 6 5	0 6 5	0 6 5	0 5 5
Skins of animals producing furs .....	0 4 0	1 0 0	0 3 0	0 3 0	0 2 5
Slate .....	0 2 0	0 1 0	0 1 0	0 0 5	0 0 5
Sleighs .....	0 3 0	0 4 0	0 2 0	0 2 0	0 2 0
Soda ash .....	0 4 0	0 2 0	0 1 0	0 1 0	0 1 0
Spikes .....	0 4 0	0 1 0	0 1 5	0 1 0	0 0 5
Split posts and round, not exceeding eight feet in length, carried in boats, per M., per mile .....	2 0 0	2 0 0	8 0 0	3 0 0	2 0 0
On the same, if carried in rafts, per M., per mile .....	8 0 0	8 0 0	8 0 0	8 0 0	8 0 0
Spokes (see <i>Lumber No. 3</i> ) .....		0 2 0	0 2 3	0 2 3	0 2 0
Staves and heading, sawed, cut and dressed or partly dressed, shoofs and stave bolts and butts, not exceeding four feet and a half in length, transported in boats .....	0 1 0	0 1 0	0 1 5	0 1 5	0 1 0
On the same if transported in rafts .....	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0

	1852.	1859.	1868.	1869.	1870.
	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.	cts. m. fr.
Steel .....	0 4 0	0 1 0	9 1 5	0 1 5	0 1 5
Stone for the manufacture of lime .....	0 1 0	0 0 5	0 1 0	0 1 0	0 0 5
Stone, wrought .....	0 2 0	0 1 5	0 1 5	0 1 0	0 1 0
Stone, unwrought and partly wrought .....	0 2 0	0 1 0	0 1 0	0 0 5	0 0 5
Stoves .....	0 3 0	0 2 0	0 3 0	0 1 5	0 1 5
Straw, pressed, and any pressed vegetable substance used for the manufacture of paper or paper pulp .....	.....	0 1 0	0 1 0	0 1 0	0 0 5
Sugar .....	0 4 0	0 0 0	0 1 5	0 1 0	0 1 0

## T.

Tallow .....	0 3 0	0 1 0	0 1 5	0 1 5	0 1 5
Tan bark, per cord, per mile, carried in boats .....	.....	0 5 0	0 5 0	0 5 0	0 5 0
Tan bark, per cord, per mile, carried in rafts .....	.....	2 0 0	2 0 0	2 0 0	2 0 0
Tan bark, ground, per 1,000 pounds, per mile .....	.....	0 2 5	0 2 5	0 2 5	0 2 5
Tar .....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5
Timber per 100 cubic feet, per mile, transported in boats:					
Squared and round, other than hemlock .....	0 4 0	0 4 0	0 6 0	0 6 0	0 6 0
Squared and round, hemlock .....	.....	0 4 0	0 4 0	0 4 0	0 4 0
Squared and round (all kinds), transported in rafts .....	1 0 0	1 0 0	1 0 0	1 0 0	1 0 0
Squared and round, transported in rafts .....	.....	0 7 0	2 0 0	2 0 0	.....
Sawed timber (see <i>Lumber No. 2</i> ), per 1,000 feet, per mile .....	0 7 0	0 5 0	0 6 5	0 6 5	0 5 5
Tin plate, going from tide-water .....	0 4 0	.....	.....	0 1 0	0 0 5
Tobacco, unmanufactured, going toward tide-water .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Tobacco, going from tide-water .....	0 4 0	0 2 0	0 1 5	0 1 5	0 1 5
Treenails (see <i>Lumber No. 3</i> ) .....	.....	0 2 0	0 2 3	0 2 3	0 2 0
Trees and shrubbery .....	.....	0 4 0	0 4 0	0 4 0	0 4 0
Turnips .....	0 1 0	0 1 0	0 1 0	0 1 0	0 1 0
Turpentine .....	0 4 0	0 1 0	0 1 5	0 1 5	0 1 5

## V.

Varnish .....	.....	0 4 0	0 2 0	0 1 5	0 1 5
Vinegar .....	0 3 0	0 2 0	0 2 0	0 1 5	0 1 5

## W.

Wagons .....	0 3 0	0 4 0	0 2 0	0 2 0	0 2 0
Water-lime, going from tide-water .....	.....	0 1 0	0 1 5	0 1 0	0 1 0
Water-lime, going toward tide-water .....	.....	0 1 0	0 1 5	0 1 5	0 1 0
Water pipes .....	0 2 0	0 2 0	0 1 5	0 1 5	0 1 0
Wheat .....	0 3 0	0 2 0	0 3 0	0 3 0	0 1 5
Window blinds, sawed stuff for (see <i>Lumber No. 3</i> ) .....	0 5 0	0 6 0	0 7 0	0 5 0	0 5 0
Window sashes .....	.....	0 6 0	0 7 0	0 5 0	0 5 0
Wood for fuel, per cord, per mile .....	0 5 0	0 5 0	0 5 0	0 5 0	0 5 0
Wood for fuel, per cord, per mile, carried in rafts .....	2 0 0	2 0 0	2 0 0	2 0 0	2 0 0
Wood, used in the manufacture of salt, per cord, per mile .....	.....	.....	0 5 0	0 5 0	0 5 0
Wool .....	0 4 0	0 2 0	0 2 0	0 1 0	0 1 0



## RATES OF TOLL FOR 1871.

The Toll sheet of 1870 was adopted for the year 1871, and was subsequently amended in the following particulars, viz..

The rate of toll on boats whose bows do not conform to the Fortieth Regulation was reduced from three to two cents per mile.

The discrimination in favor of "pine timber," squared and round, transported in rafts, was discontinued, and the uniform rate of one cent per one hundred cubic feet was established for all kinds of timber, and the rate of toll on "iron bridge and railing, iron bolts and railroad chairs," when cleared at tide-water, was reduced to one-half of one mill per one thousand pounds per mile.

## RATES OF TOLL FOR 1872.

The Toll sheet for 1872 was the same as that for 1871, as amended, with the exception of reduced rates upon melted glass, gypsum, potatoes, iron, cleared at tide-water, and stone, unwrought, or partly wrought.

## RATES OF TOLLS, 1873.

Established by the CANAL BOARD on persons and property transported on the New York State Canals, to take effect on the opening of navigation.

### ARTICLES PAYING ONE-HALF MILL PER 1,000 POUNDS PER MILE.

Ashes, leached.	Lead, bar and pig, going toward tide-water.
Bones.	Lime stone.
Car axles, when cleared at tide-water.	Manure.
Car wheels.	Marl.
Charcoal.	Nails.
Coal, anthracite and bituminous.	Petroleum, crude and refined.
Coal oil.	Peat.
Coal tar and products thereof.	Pig iron, going from tide-water.
Cullet, or broken glass to be melted over.	Sand.
Earth.	Saw dust.
Gypsum, unground, product of this state.	Scrap iron.
Hay, pressed.	Slate.
Horse shoes.	Spikes.
Ice.	Steel, in bars and bundles, when cleared at tide-water.
Iron, articles exclusively manufactured of wrought or rolled iron, not specifically enumerated, when cleared at tide-water.	Stone, for the manufacture of lime.
Iron, boiler, when cleared at tide-water.	Stone, wrought, partly wrought, unwrought.
Iron, in bars and bundles, when cleared at tide-water.	Straw, pressed, and any pressed vegetable substance used for the manufacture of paper and paper-pulp.
Iron ore.	Tin plate, going from tide-water.
Iron, bloom and pig, going from tide-water.	

### ARTICLES PAYING ONE MILL PER 1,000 POUNDS PER MILE.

Bacon.	Cotton.
Barrels, empty, transported in boats.	Crockery.
Bleaching powders, going from tide-water.	Esculent roots.
Bran.	Fire brick.
Brick.	Fish, salted, going from tide-water.
Brunstone.	Gas pipes.
Car axles, when not cleared at tide-water.	Gypsum, ground and unground.
Casks, empty, transported in boats.	Hemp, going toward tide-water.
Cement, fire-proof and hydraulic.	Iron, bloom and pig, going toward tide-water.
Clay.	Lard.
Coffee.	Lard oil.
Copper ore.	Lime.
Copper, pig and smelted.	Molasses.

Onions.	Staves and heading, sawed, cut and dressed or partly dressed, shooks and stave bolts and butts, not exceeding four feet and a half in length, transported in boats.
Plaster, Calcinea or Plaster of Paris, going from tide-water.	Sugar.
Potatoes.	Tobacco, unmanufactured, going toward tide-water.
Railroad chairs.	Turnips.
Railroad iron.	Water lime.
Rice, going from tide-water.	Water pipes.
Sal soda, going from tide-water.	Wool.
Salt, manufactured in this state.	
Salted fish, going from tide-water.	
Soda ash.	

## ARTICLES PAYING ONE AND ONE-HALF MILLS PER 1,000 POUNDS PER MILE.

Agricultural implements, going from tide-water.	Junk.
Articles not enumerated, going from tide-water.	Leather.
Barley.	Mahogany.
Barytes.	Merchandise, not enumerated.
Beans.	Oats.
Beef, salted.	Oil cake.
Cabinet ware.	Oil meal.
Castings, all iron castings.	Peas.
Cheese.	Pork, salted.
Cider.	Rags.
Corn.	Rye.
Corn meal.	Safes, iron.
Cottons, domestic.	Ship stuffs.
Flour.	Spirits, domestic distilled.
Furniture, Cabinet ware and Chairs.	Steel, in bars and bundles, when not cleared at tide-water.
Furniture for Stoves.	Stoves.
Glass ware.	Tallow.
Grease.	Tar.
Hides.	Tobacco, going from tide-water.
Iron, in sheets, bars and bundles, when not cleared at tide-water.	Turpentine.
Iron, boiler, when not cleared at tide-water.	Varnish.
Iron, bridge and railing.	Vinegar.
Iron bolts.	Wheat.
	Woolens, domestic.

## ARTICLES PAYING TWO MILLS PER 1,000 POUNDS PER MILE.

Acid, sulphuric.	Clover seed.
Agricultural products of the United States, not particularly specified.	Flax seed.
Apples.	Grass seed.
Articles not enumerated, going toward tide-water.	Hogs, alive.
Ashes, pot and pearl.	Hoops, rived.
Butter.	Hops.
Carboys.	Malt.
Carts.	Sheep, alive.
Carriages.	Ship knees.
Cattle, alive.	Sleighs.
	Wagons.

## ARTICLES PAYING TWO AND ONE-HALF MILLS PER 1,000 POUNDS PER MILE.

Buffalo skins.	Salt, foreign.
Deer skins.	Skins of animals producing furs.
Furs.	Tan bark, ground.
Moose skins	

## ARTICLES PAYING THREE MILLS PER 1,000 POUNDS PER MILE.

Horses.

## ARTICLES PAYING FOUR MILLS PER 1,000 POUNDS PER MILE.

Powder and Gun Powder.	Trees.
Shrubby.	

## ARTICLES PAYING FIVE MILLS PER 1,000 POUNDS PER MILE.

Barrels, empty, transported in rafts.	Hoop poles, transported in rafts.
Bolts, stave, transported in rafts.	Ship knees, transported in rafts.
Butts, stave, transported in rafts.	Staves and heading not exceeding four feet and a half in length, transported in rafts.
Casks, empty, transported in rafts.	Window blinds, sawed stuff for.
Heading, transported in rafts.	Window sashes.
Hop poles, transported in rafts.	

# RATES OF TOLL.

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## LUMBER, SHINGLES AND TIMBER.

### LUMBER No. 1.\*

*Transported in boats by weight, per 1,000 pounds per mile:*

	c.	m.	fr.
White pine, white wood, cherry, basswood, cedar boards, planks, scantling, and on all sidings, lath and other sawed stuff, less than one inch thick (except such as is enumerated in <i>Lumber No. 3</i> )	0	2	0
Oak, hickory, beech, sycamore, black walnut, butternut, maple, ash, elm, fir, tamarack and yew	0	1	5
Hemlock and spruce	0	1	0

### LUMBER No. 2.\*

*Transported in boats by measurement, per 1,000 feet per mile:*

Boards, planks, scantling, railroad ties, pickets for fences and sawed timber, reduced to inch measure, and all siding, lath and other sawed stuff, less than one inch thick (except such as is enumerated in <i>Lumber No. 3</i> ), tolls computed on surface measure; lath, when cleared by measurement, may be estimated at <i>twenty feet</i> for each bunch of one hundred pieces; and all kinds of red cedar, cedar posts, estimated that a cord, after deducting for openings, will contain 1,000 feet	0	5	5
Hemlock, per 1,000 feet per mile, when not weighed	0	3	0
Lumber No. 2, transported in rafts, per 1,000 feet per mile	2	5	0

### LUMBER No. 3.\*

*Transported in boats by weight, per 1,000 pounds per mile:*

Sawed lath of less than ten feet in length, split lath, rived hoops, hoop poles, hand spikes, rowing oars, broom handles, spokes, hubs, treenails, fellies, boat and ship knees, plane stocks, pickets for fences, railroad ties, last blocks, stuff—manufactured or partly manufactured—for boxes, chairs and bedsteads, hop poles, brush handles, brush backs, looking-glass backs, gun stocks, plow beams and plow handles	0	2	0
Sawed stuff for window blinds, not exceeding one-fourth of an inch in thickness	0	5	0
<b>Timber</b> per 100 cubic feet, per mile, transported in boats:			
Squared and round, other than hemlock	0	6	0
Square and round, hemlock	0	4	0
Square and round (all kinds), transported in rafts	1	0	0
Sawed timber (see <i>Lumber No. 2</i> ), per 1,000 feet per mile	0	5	5
<b>Shingles</b> in boats, per 1,000 pounds per mile	0	1	5
do in boats, per M, per mile	0	0	5
do in rafts, per M, per mile	0	4	0
Posts, split and round, not exceeding eight feet in length, carried in boats, per M, per mile	2	0	0
On the same, if carried in rafts, per M, per mile	8	0	0
Rails for fences, not exceeding fourteen feet in length, carried in boats, per M, per mile	2	0	0
On the same, if carried in rafts, per M, per mile	8	0	0

\* **LUMBER** shall not be cleared by measurement when carried in a boat having other articles on board paying toll by **WEIGHT**, but such lumber shall, in all such cases, be also cleared by weight.

When a cargo is composed entirely of lumber, which can be cleared by weight or measure, the whole of such cargo shall be cleared by measurement or by weight, as the shipper or master may elect, and in no case shall a portion of any such cargo be cleared by measurement and the other portion by weight.

## ARTICLES PAYING TOLL BY THE CORD.

	c.	m.	fr.
Tan Bark, per cord, per mile, carried in boats	0	5	0
Tan Bark, per cord, per mile, carried in rafts	2	0	0
Wood for fuel, per cord, per mile, carried in boats	0	5	0
Wood for fuel, per cord, per mile, carried in rafts	2	0	0

## BOATS AND PASSENGERS.

On boats <i>used chiefly</i> for the transportation of passengers, upon <i>all canals</i> , per mile	4	0	0
On the same, if they elect to commute for tolls upon passengers	3	0	0
On boats <i>used chiefly</i> for the transportation of property, per mile	2	0	0
On the same, if they elect to commute for tolls upon passengers	2	3	0
On boats registered before July 1, 1862, whose bows do not conform to regulation No. 40, per mile	2	0	0
Boats used exclusively in the towage of boats on the canals, together with the machinery and fuel necessary therefor, exempt from toll			
On all persons over ten years of age, per mile	0	0	5

STATE OF NEW YORK, }  
CANAL DEPARTMENT, ALBANY, April 3, 1873. }

I CERTIFY the foregoing to be a correct list of the rates of Toll established by the CANAL BOARD, to take effect on the opening of navigation.

G. A. DAYTON, Auditor.

## STATEMENT OF TONNAGE, VALUES AND TOLLS.

The total tonnage of property of all kinds passing over the canals of this state, its value and the total amount of tons collected from the year 1852 to 1872 inclusive, will be shown by the following statement:

YEAR.	Tons.	Value.	Tolls.
1852 . . . . .	3,863,441	\$196,603,517	\$3,118,244
1853 . . . . .	4,247,852	267,119,570	3,204,718
1854 . . . . .	4,165,862	210,284,312	2,773,566
1855 . . . . .	4,022,617	204,390,147	2,805,077
1856 . . . . .	4,116,082	218,327,062	2,748,203
1857 . . . . .	3,344,061	136,997,018	2,045,641
1858 . . . . .	3,665,192	188,568,844	2,110,754
1859 . . . . .	3,781,684	132,160,758	1,723,945
1860 . . . . .	4,650,214	170,849,198	3,009,597
1861 . . . . .	4,507,635	130,115,893	3,908,785
1862 . . . . .	5,598,785	203,234,331	5,188,943
1863 . . . . .	5,557,692	240,046,461	4,645,207
1864 . . . . .	4,852,941	274,400,639	3,983,982
1865 . . . . .	4,729,654	256,237,104	3,849,955
1866 . . . . .	5,775,220	270,963,076	4,436,639
1867 . . . . .	5,688,325	278,956,712	4,088,058
1868 . . . . .	6,442,225	305,301,929	4,246,563
1869 . . . . .	5,850,080	249,281,284	3,778,501
1870 . . . . .	6,173,769	231,836,176	2,611,578
1871 . . . . .	6,467,888	238,767,691	3,100,838
1872 . . . . .	6,627,462	.....	3,072,411

## STATISTICS

*Relating to the Canals of this State, compiled from the Reports of the Canal Commissioners and the State Engineer and Surveyor for 1873.*

## ERIE CANAL.

Total cost of construction, \$43,639,324.

REMARKS.	Old canal (not now in existence).	Enlargement.
Construction authorized .....	April 15, 1817.....	May 11, 1835.
Construction commenced .....	July 4, 1817.....	August, 1836.
Construction completed .....	Oct. 26, 1836.....	September, 1862.
Estim'd cost at engineer's prices.....	\$4,926,738 .....	\$23,402,863.
Actual cost of construction .....	\$7,143,789 .....	\$36,495,535.
Total feet of lockage.....	675½ feet .....	654 80-100 feet.
Length from Albany to Buffalo.....	363 miles .....	350½ miles.
Number locks and size of chambers.....	83 locks, 90 x 115 .....	72 locks, 110 x 18.
Size of prism.....	40 and 23 x 4 .....	70 and 56 x 7.
Maximum dimension of boats.....	78 62-100 x 14 46-100 x 3½ draft, 1,	98 x 17 5-11 x 6 5-12 draft, 2.
Burthen of boats .....	75 tons .....	220 tons.

## CHAMPLAIN CANAL AND GLENS FALLS FEEDER.

Construction authorized .....	April 15, 1817.
Glens Falls feeder authorized .....	April, 1822.
Estimated cost of canal at engineer's prices .....	\$571,000.
Navigation opened from Fort Edward to Lake Champlain .....	November 24, 1819.
Canal completed from Waterford to Lake Champlain .....	1822.
Canal, cost of construction up to 1832.....	\$621,011.
Feeder, cost of construction up to 1837.....	\$91,944.
Total cost of both included improvements, exclusive of ordinary repairs, June, 1868.....	\$2,373,910.
Number of locks on canal, 20; feeder, 13.....	Size, 110 x 18 and 100 x 15.
Length of canal, 66 miles; feeder, 7 miles; pond, 5 miles.....	78 miles.
Size of prism, canal and feeder.....	40 26 x 4.
Size authorized, chap. 213, Laws 1860.....	50 35 x 5.

## CAYUGA AND SENECA CANAL—CAYUGA INLET.

Total cost, \$1,520,542.

REMARKS.	Cayuga and Seneca canal.	Cayuga Inlet.
Construction authorized, enlargement of locks .....	April 20, 1825.....	May 25, 1836.
Enlargement of prism .....	.....	April 15, 1854.
Estim'd cost at engineer's prices.....	\$811,188 .....	\$150,000.
Estim'd cost at contract prices.....	\$795,273 .....	\$160,396.
Canal completed.....	November 15, 1828 .....	September, 1862.
Cost of construction .....	\$1,806,542 .....	\$214,000.
Number of locks, and size.....	11, 110 x 18 .....	1, 110 x 18.
Feet of lockage.....	83½ feet.....	24½ miles, 70 and 56 x 7.
Length and size of prism .....	.....	.....

## OSWEGO CANAL.

Total cost, \$3,077,429.

REMARKS.	Oswego canal.	Enlarged Oswego canal.
Construction authorized.....	April 20, 1825.....	April 15, 1854.
Enlargement of locks.....		Chapter 262, Laws of 1847.
Estim'd cost at engineer's prices.....	\$227,000.....	\$1,926,336.
Estimated cost at contract prices.....	\$437,000.....	\$2,051,190.
Construction completed.....	December 10, 1828.....	September, 1862.
Cost of construction.....	\$565,437.....	\$2,925,513.
Number of locks and size.....	18, 90 x 15.....	17, 110 x 18.
Feet of lockage.....	154.85 feet.....	154.85 feet.
Average cost of one lock.....	\$10,000.....	\$31,000.
Size of prism of canal.....	40 and 26 x 4.....	70 and 36 x 7 feet.
Guard locks.....	Six.....	Five.
Burthen of boats.....	50 to 75 tons.....	230 tons.
Length of canal.....	38 miles.....	33 miles.

## CROOKED LAKE CANAL.

Construction authorized.....	April 11, 1829.
Construction commenced.....	April, 1830.
Estimated cost at engineer's prices.....	\$119,198.
Estimated cost at contract prices.....	\$95,820.
Canal completed.....	October 10, 1833.
Cost of construction.....	\$339,287.
Number of locks, 27; size.....	90 x 15 feet.
Size of canal prism.....	42 and 26 x 4.
Length of canal.....	8 miles.
All the locks are composite.	
Feet of lockage.....	277 83-100 feet.

## CHEMUNG CANAL AND FEEDER.

Construction authorized.....	April 15, 1829.
Estimated cost, engineer's prices.....	\$331,225.
Estimated cost, contractor's prices.....	\$291,831.
Construction completed.....	September, 1831.
Cost of construction, 1831.....	\$314,395.
Cost of construction, 1862.....	\$1,273,261.
Length and size main canal.....	23 miles; 42 x 23 x 5 feet.
Length and size of feeder.....	16 miles; 41 x 26 x 4 feet.
Number and size of locks on canal.....	49 locks; 90 x 15 feet.
Number and size of locks on feeder.....	4 locks; 90 x 15 feet.
Kind of locks.....	Wood.
Cost of each first set..... \$1,650; age of lock.....	9 years.
Cost of each second set.. 5,500; age of lock.....	19 years.
Cost of each third set.... 8,484; completed.....	September 9, 1863.

## CHENANGO CANAL.

Construction authorized.....	February 23, 1833.
Construction commenced.....	July, 1834.
Construction, estimated at engineer's prices.....	\$1,960,450.
Construction, estimated at contractors' prices.....	\$1,859,849.
Construction completed.....	October, 1836.
Construction, actual cost.....	\$2,782,124.
Number and size of locks.....	116 locks; 90 x 15 feet.
Size of prism.....	40 and 28 x 4.
Kind of locks.....	Rubble stone.
Average cost of one lock.....	\$8,000.
Length of main line of canal.....	97 miles.
Feet of lockage.....	1,015½.
Burthen of boats.....	50 to 70 tons.

## BLACK RIVER CANAL, FEEDER AND BLACK RIVER IMPROVEMENT.

Construction authorized.....	April 19, 1836.
Construction commenced.....	January, 1838.
Estimated cost at engineer's prices.....	\$1,094,437.
Estimated cost at contract prices.....	\$2,431,669.

Canal completed.....	1849.
Cost of construction.....	\$3,224,779.
Number and size of locks.....	109 locks; 90 x 15.
Length of canal to Lyon's Falls.....	35 miles.
Length of river to Carthage, and fall.....	42 miles; 9½ feet.
Size of prism of canal and feeder.....	42 and 28 x 4.
Length of navigable feeder, and fall.....	10½ miles; 6 10-100 feet.
Burthen of boats.....	45 to 50 tons.
Lockage of canal.....	1,082¾ feet.

### GENESEE VALLEY CANAL AND DANSVILLE BRANCH.

Construction authorized.....	May 6, 1836.
Estimated cost at engineer's prices.....	\$2,002,285.
Estimated cost at contract prices.....	\$4,900,122.
Completed to Dansville.....	November 1, 1842.
Completed to Olean.....	November, 1856.
Completed to Mill Grove pond.....	December, 1861.
Total cost of canal and reservoirs ..	\$5,827,813.
Length of canal and side cut.....	124¾ miles.
Size of prism of same.....	42, 26 x 4 feet.
Burthen of boats.....	50 to 55 tons.
28 stone locks, cost each.....	\$10,000.
73 composite locks, cost each.....	\$8,000.
11 wood locks, cost each.....	\$5,000.
Total number and size of locks.....	112 locks 90 x 15 feet.

### ONEIDA LAKE CANAL AND ONEIDA RIVER IMPROVEMENT.

REMARKS.	Oneida Lake canal.	Oneida River improv't.
Construction authorized.....	March 22, 1832.....	April 29, 1839.
Estim'd cost at engineer's prices.....	\$40,000.....	\$100,049.
Construction completed.....	1836.....	1850.
Cost of construction.....	\$78,829.....	\$79,346.
Purchased of company by state..	May 11, 1840.....	For \$50,000.
Enlargement of locks authorized.....	Chapter 46, Laws of 1860.....	
Number and size of new locks...	7, 110 x 18 .....	2, 120 x 30½.
Size of prism .....	40 x 26 x 4 .....	80 x 60 x 4½.
Length .....	7 miles.....	29 miles.
Feet of lockage.....	60¾ feet.....	No. 1, 3 feet; No. 2, 3¾ ft.

*STATEMENT of the number of locks, their lift in feet, total lockage of each canal, etc., etc., of all the canals in the state of New York.*

NAME OF CANAL.	Length in miles.	Lockage in feet.
Erie canal .....	351.78	654.80
Navigable feeders of same.....	3.35	.....
Champlain canal.....	66.00	179.50
Pond above Troy dam.....	3.00	.....
Glen's Falls feeder and pond .....	12.00	132.00
Black River canal.....	35.33	1,082.25
Black River feeder .....	13.47	.....
Black River Improvement.....	42.50	.....
Oneida Lake canal.....	6.00	62.00
Oswego canal .....	38.00	154.85
Oneida River Improvement.....	20.00	7.85
Seneca River towing-path.....	5.00	.....
Baldwinsville canal .....	1.00	8.00
Cayuga and Seneca canal.....	22.77	76.61
Crooked Lake canal.....	8.00	277.83
Chemung canal and feeder .....	39.00	504.88
Cayuga inlet.....	2.00	.....
Chenango canal.....	97.00	1,015.33
Genesee Valley canal and feeder...	116.50	1,045.39
Dansville branch of same.....	11.00	82.50
Total.....	839.70	5,283.79

## SUMMARY.

Erie canal .....	352	
Albany basin .....	1	
feeders .....	8	
	—	361 miles.
Champlain canal .....	66	
Glen's Falls feeder .....	12	
Pond above Troy dam .....	3	
	—	81 miles.
Cayuga and Seneca canal .....		23 miles.
Oswego canal .....	38	
Baldwinsville side cut .....	1	
Oneida River improvement .....	20	
Seneca River towing-path .....	5½	
Seneca River improvement .....	12½	
	—	77 miles.
Crooked Lake canal .....		8 miles.
Chemung canal .....	23	
feeder .....	16	
	—	39 miles.
Chenango canal .....		97 miles.
Black River canal .....	35	
feeder and reservoir .....	12	
River improvement .....	42	
	—	89 miles.
Genesee Valley canal .....	107	
Dansville side cut .....	11	
	—	118 miles.
Oneida Lake canal and feeder .....		7 miles.
Total .....		900 miles.

*STATEMENT showing the total cost of construction of the New York state canals, together with the expenditures for repairs, maintenance and collection; also the total amount of tolls received, each canal being credited with the amount of tolls upon the tonnage contributed to the Erie, and charged with its proportion of repairs and maintenance upon the same, up to and including 1866.*

NAME OF CANAL.	EXPENDITURES.			RECEIPTS.
	For construction, enlargements and improvements.	For repairs, maintenance and collection.	Total for construction, management, etc.	From tolls.
Erie and Champlain .....	\$46,018,234	\$12,900,333	\$58,918,567	\$81,057,168
Oswego .....	3,490,949	4,639,219	8,130,168	9,283,230
Cayuga and Seneca .....	1,520,542	1,200,044	2,720,586	2,184,300
Chemung .....	1,273,261	1,794,649	3,067,910	2,012,575
Crooked Lake .....	333,287	459,374	792,661	520,416
Chenango .....	2,782,124	1,022,026	3,804,150	737,285
Black River .....	3,224,779	498,866	3,723,645	242,603
Genesee Valley .....	5,827,813	1,689,303	7,517,116	1,806,913
Oneida Lake .....	64,837	123,234	188,071	65,180
Baldwinsville .....	23,556	25,035	48,591	1,261
Oneida River improvement .....	146,944	25,005	171,999	204,288
Seneca River towing-path .....	1,488	20	1,508	5,251
Cayuga Inlet .....	2,968	.....	2,968	4,596
Totals .....	\$64,710,832	\$24,377,108	\$89,087,940	\$97,625,066



## SUMMARY.

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Total cost of construction, as above.....	\$64,710,832
Total interest on same.....	93,736,654
Total cost maintenance, repairs and collection.....	24,377,114
Total interest on same.....	27,268,895
<hr/>	
Total from commencement to completion.....	\$210,093,495
Aggregate receipts from tolls, with interest thereon,	202,619,510
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Present cost to the state of the entire canal system,	\$7,473,985
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## A L I S T

OF THE PRINCIPAL PLACES ON THE CANALS, AND THEIR DISTANCES FROM EACH OTHER,  
AS ADOPTED BY THE CANAL BOARD.

## 1. ERIE CANAL.

TABLE showing the distance in miles from each collector's office to all the principal places on the Erie canal,  
alphabetically arranged, including Albany Basin.

NAME OF PLACES.	Albany.	West Troy.	Schenectady.	Fultonville.	Little Falls.	Utica.	Rome.	Syracuse.	Jordan.	Montezuma.	Lyons.	Palmyra.	Rochester.	Brockport.	Albion.	Medina.	Lockport.	Tonawanda.	Lower Black Rock.	Buffalo.
Adams' Basin.....	274	237	244	218	187	164	149	108	89	75	57	42	15	9	19	29	47	66	74	78
Albany.....	0	7	30	56	87	110	125	166	185	199	217	232	259	279	283	303	321	340	348	352
Albion.....	283	286	263	237	206	183	168	127	108	94	76	61	34	10	0	14	28	47	55	59
Auritesville.....	53	46	23	3	34	57	72	113	132	146	164	179	206	226	240	250	268	287	295	299
Bellisle.....	172	165	142	116	85	62	47	6	13	27	45	60	87	107	121	131	149	168	176	180
Black Rock.....	349	342	319	293	262	239	224	183	164	150	132	117	107	70	56	46	28	9	1	3
Bolivar.....	152	145	122	96	65	42	27	14	33	47	65	80	107	127	141	151	169	188	196	200
Brighton.....	256	249	225	200	169	146	131	90	71	57	39	24	3	23	37	47	65	84	92	96
Brockport.....	279	272	249	223	192	169	154	113	94	80	62	47	20	0	14	24	42	61	69	73
Brockville.....	288	281	258	232	201	178	163	122	103	89	71	56	29	9	15	34	52	71	80	84
Brockways.....	269	262	239	213	182	159	144	103	84	70	52	37	10	10	24	34	52	71	79	83
Buffalo.....	332	345	322	296	265	242	227	186	167	153	135	120	93	73	59	49	31	12	4	0
Bushnell's Basin.....	248	241	218	192	161	138	123	82	63	49	31	16	11	31	45	55	73	92	100	104
Canamillus.....	175	168	145	119	88	65	50	9	10	24	42	57	84	104	118	128	146	165	173	177
Canajoharie.....	68	61	38	12	19	42	57	98	117	131	149	164	191	211	225	235	253	272	290	284
Canastota.....	145	138	115	89	58	35	20	21	16	35	49	67	102	120	143	158	176	195	203	217
Canaseraga Landing.....	150	143	120	94	63	40	25	16	5	19	37	52	79	99	113	123	141	160	168	172
Canton.....	180	173	150	124	93	70	55	14	5	19	37	52	79	99	113	123	141	160	168	172
Cartersville.....	250	243	220	194	163	140	125	84	65	51	33	18	9	29	43	53	71	90	98	102
Centreport.....	192	185	162	136	105	82	67	26	7	7	25	40	67	87	101	111	129	148	156	160
Chittenango.....	151	144	121	95	64	41	26	15	34	48	66	81	108	128	142	152	170	189	197	201
Clyde.....	210	203	180	154	123	99	85	44	25	11	206	221	248	268	282	292	310	329	338	341
Chicoes.....	11	4	19	45	76	99	114	155	174	188	206	221	248	268	282	292	310	329	337	341
Cold Spring.....	186	179	158	130	99	76	61	20	1	13	31	46	73	93	107	117	135	154	162	166
Cooley's Basin.....	277	270	247	221	190	167	152	111	92	78	60	45	18	2	16	20	44	63	71	75
Crescent.....	14	7	16	42	73	96	111	152	171	185	203	218	245	265	279	289	307	326	334	338
Dunbarton.....	136	129	106	80	49	26	11	30	49	68	81	96	123	145	157	167	185	204	212	216

Durhamville.....	140	133	110	84	53	30	15	26	45	59	77	92	119	139	163	181	200	208	212
Eagle Harbor.....	206	268	268	240	209	186	171	130	111	97	79	64	37	17	7	25	44	52	56
East Arcadia.....	220	190	190	164	183	150	130	84	103	117	135	160	177	137	83	101	120	128	132
East Canada Creek.....	62	75	62	130	5	28	43	94	59	43	27	12	15	35	221	239	258	260	270
Fairport.....	244	214	214	188	157	134	119	78	59	43	27	12	15	35	221	239	258	260	270
Fort Plain.....	71	64	41	15	10	38	54	95	114	128	146	161	188	208	232	250	269	277	281
Frankfort.....	101	94	71	45	14	39	24	65	84	96	116	131	158	178	202	220	239	247	251
Fullam's Basin.....	245	238	215	189	158	135	120	79	60	46	28	13	14	34	48	76	95	108	107
Fultonville.....	56	49	26	0	31	54	69	110	129	143	161	176	203	223	247	265	284	292	296
Ferguson's.....	106	99	76	50	19	60	69	110	129	143	161	176	203	223	247	265	284	292	296
Gaines' Basin.....	288	285	265	239	208	185	170	129	110	96	78	63	36	16	2	26	45	53	57
Gasport.....	315	308	285	259	228	205	190	149	130	116	98	83	56	36	12	6	25	33	37
Geddes.....	168	161	138	112	81	58	143	2	17	31	49	64	91	111	135	153	172	180	184
Greece (6 mile grocery).....	266	236	210	179	156	141	100	31	50	64	82	97	124	144	168	186	205	218	217
Higginsville.....	135	128	105	79	48	25	10	31	50	64	82	97	124	144	168	186	205	218	217
Hindsburgh.....	289	282	263	233	202	173	164	123	104	90	72	57	30	10	4	32	51	59	63
Hoffman's Ferry.....	40	33	10	16	47	70	85	126	145	159	177	192	219	239	263	281	300	308	312
Holley.....	284	277	254	228	207	174	159	118	99	83	67	52	25	8	19	37	56	64	68
Holburton.....	287	280	257	231	200	177	162	121	102	88	70	55	28	5	16	34	53	61	65
Ilion.....	98	91	68	42	11	12	27	68	87	101	119	134	161	181	205	223	242	250	254
Jordan.....	185	178	165	129	98	75	60	19	0	14	32	47	74	94	118	136	155	163	167
Junction.....	7	0	23	49	90	103	118	159	178	192	210	225	252	272	286	314	333	341	345
Kirkville.....	155	148	125	99	68	45	30	11	30	44	62	77	104	124	148	166	185	193	197
Knappville.....	241	234	211	185	164	131	116	75	56	42	24	9	18	38	52	62	80	90	111
Knappville.....	241	234	211	185	164	131	116	75	56	42	24	9	18	38	52	62	80	90	111
Lenox.....	143	136	113	87	56	33	14	23	26	40	58	73	100	120	134	144	162	181	189
Limes/one Feeder.....	159	152	129	103	72	49	34	7	26	40	58	73	100	120	134	144	162	181	189
Little Falls.....	87	80	57	31	0	23	38	79	98	115	130	145	172	192	206	231	253	261	265
Lockport.....	214	207	184	158	127	104	89	48	29	15	3	18	45	65	79	89	107	126	134
Lockport.....	321	314	291	265	234	211	186	153	136	122	104	89	62	45	65	79	89	107	126
Lockville.....	223	216	193	167	136	113	98	57	38	24	6	26	40	50	68	87	107	126	134
Lock No. 65.....	253	246	223	197	166	143	128	87	68	54	36	21	6	26	40	50	68	87	99
Loel.....	165	158	135	109	78	55	40	1	20	34	52	67	94	114	134	158	186	193	187
Loomis.....	137	130	107	81	50	27	12	23	48	62	80	95	122	142	158	186	193	203	211
Lower Black Rock.....	341	318	292	262	238	212	182	148	129	113	91	74	110	89	69	45	27	8	4
Lyons.....	217	210	187	161	130	107	92	51	32	18	0	15	42	62	76	83	104	123	135
Mabees.....	314	307	284	258	227	204	189	148	129	113	91	74	110	89	69	45	27	8	4
Macedon.....	286	279	256	230	204	178	163	121	104	87	70	51	37	19	4	85	104	112	116
Mantus.....	158	151	128	102	71	48	33	8	27	41	59	74	101	121	135	145	163	182	194
Martinsville.....	338	329	306	280	249	226	211	170	151	137	119	104	77	57	43	33	42	52	56
Medina.....	303	296	273	247	216	193	178	137	118	104	86	71	44	24	10	6	18	37	45
Middleport.....	300	293	270	243	212	189	174	133	114	100	82	67	42	23	43	35	43	51	55
Millards.....	318	311	288	262	231	208	193	162	133	119	101	86	59	39	25	15	23	30	34
Mindenville.....	78	71	48	22	9	32	47	88	107	124	139	154	181	201	218	235	252	270	274
Mohawk.....	95	88	65	39	8	15	30	71	90	104	122	137	164	184	201	218	235	252	274
Montezuma.....	199	192	169	143	112	89	74	33	14	0	18	33	60	80	94	104	122	141	149
Newark.....	224	217	194	168	137	114	99	58	39	25	6	8	35	55	69	79	97	116	124
New Boston Landing.....	149	142	119	93	62	39	24	17	36	50	68	86	110	130	144	154	172	191	199
New London.....	131	124	101	75	44	21	6	35	54	68	86	101	128	148	162	172	190	209	217
Nine Mile Creek.....	174	167	144	118	87	64	49	8	11	25	43	58	85	105	129	147	178	198	203
Orangeport.....	316	309	286	260	229	206	191	150	131	117	99	84	57	37	23	13	24	32	36
Oriskany.....	117	110	87	61	30	7	8	49	68	82	100	115	142	162	176	186	204	223	235

NAME OF PLACES.	Albany.	West Troy.	Schenectady.	Fultonville.	Little Falls.	Utica.	Rome.	Syracuse.	Jordan.	Montezuma.	Lyons.	Palmyra.	Rochester.	Brockport.	Albion.	Medina.	Lockport.	Tonawanda.	Lower Black Rock.	Buffalo.
Orville Feeder.....	161	154	131	105	74	151	36	5	24	38	56	71	98	118	132	142	160	179	187	191
Palmyra.....	232	225	202	176	145	122	107	66	47	53	15	0	27	47	61	71	89	108	116	120
Pendleton.....	328	321	298	272	241	218	203	162	143	129	111	96	69	49	35	25	7	12	20	24
Peru.....	182	175	152	126	95	72	57	16	3	17	35	50	77	97	111	121	139	158	166	170
Pickardville.....	333	326	303	277	246	223	208	167	148	134	116	101	74	54	40	30	12	7	15	19
Pitt Lock.....	205	198	175	149	118	95	80	39	20	6	12	27	54	74	88	98	116	135	143	147
Pittsford.....	251	244	221	195	164	141	126	85	66	52	34	19	8	28	42	52	70	89	97	101
Pool's Brook.....	154	147	124	98	67	44	29	12	31	45	53	78	105	125	139	149	167	186	194	198
Port Byron.....	194	187	164	138	107	84	69	28	9	5	33	38	65	85	99	109	127	146	154	158
Port Gibson.....	227	220	197	171	140	117	102	61	42	28	10	5	32	52	66	76	94	113	121	125
Port Jackson.....	46	39	16	10	41	64	79	120	139	153	171	186	213	253	247	257	275	294	302	306
Reynale's Basin.....	313	306	283	257	226	203	188	147	128	114	96	81	54	34	20	10	8	27	35	39
Rochester.....	259	252	229	203	172	149	134	93	74	60	42	27	104	154	168	178	196	215	223	227
Rome.....	125	118	95	69	38	15	9	41	60	74	92	107	137	164	168	178	196	215	223	227
Schenectady.....	30	23	0	26	57	80	95	136	155	169	187	202	229	249	253	273	291	310	318	322
Schoharie Creek.....	51	44	21	5	30	59	74	115	134	148	166	181	208	228	242	252	270	289	297	301
Suelby's Basin.....	806	239	276	250	219	196	181	140	121	107	89	74	47	27	13	3	15	34	42	46
Spencerport.....	271	264	241	215	184	161	146	105	86	72	54	39	12	8	22	32	50	69	77	81
Sprakers.....	65	58	35	9	22	45	60	101	120	134	152	167	194	214	225	238	256	275	283	287
St. Johnsville.....	76	59	46	20	11	34	49	90	109	123	141	156	183	203	217	227	245	264	272	276
Sulphur Springs, G. Lock.....	326	319	296	270	239	216	201	160	141	127	109	94	67	47	33	23	5	14	22	26
Syracuse.....	166	159	136	110	79	56	41	0	19	33	51	66	93	113	127	137	155	174	182	186
Tonawanda.....	340	333	310	284	253	230	215	174	155	173	191	206	233	253	267	277	295	314	322	326
Upper Aqueduct.....	26	19	4	30	61	84	99	140	159	173	191	206	233	253	267	277	295	314	322	326
Utica.....	110	103	80	54	25	0	15	56	75	89	107	122	149	169	183	193	211	230	238	242
Wayneport.....	239	232	200	183	152	129	114	73	54	40	22	7	20	40	54	64	82	101	109	113
West Troy.....	130	123	100	134	103	80	65	24	5	9	27	42	69	89	103	113	131	150	158	162
Whitesboro'.....	7	0	23	49	27	4	11	32	71	85	103	118	145	165	179	189	207	226	234	238
Yatesville.....	114	107	84	58	30	25	63	104	123	137	155	170	197	217	231	241	259	278	286	290
York Mills.....	55	55	32	6	25	48	3	53	72	86	104	119	146	166	180	191	208	227	235	239

## 1. ERIE CANAL.

*Distance from place to place.*

MILES.		MILES.	
ALBANY .....	0	Weedsport .....	4
West Troy .....	7	Centreport .....	2
Junction .....	0	Port Byron .....	2
Cohoes .....	4	Montezuma .....	5
Crescent .....	3	Pitt Lock .....	6
Upper Aqueduct .....	12	Clyde .....	6
Schenectady .....	4	Lock Berlin .....	5
Hoffman's Ferry .....	10	Lyons .....	4
Port Jackson .....	6	East Arcadia .....	3
Schoharie Creek .....	5	Lockville .....	3
Aurlesville .....	2	Newark .....	1
Fultonville .....	3	Port Gibson .....	3
Yatesville .....	6	Palmyra .....	5
Sprakers .....	3	Macedon .....	4
Canajoharie .....	3	Wayneport .....	3
Fort Plain .....	3	Knappville .....	2
St. Johnsville .....	5	Fairport .....	3
Mindenville .....	2	Fullam's Basin .....	1
East Canada Creek .....	4	Bushnell's Basin .....	3
Little Falls .....	5	Cartersville .....	2
Mohawk .....	8	Pittsford .....	1
Ilion .....	3	Lock No. 65 .....	2
Frankfort .....	3	Brighton .....	3
Fergusons .....	5	Rochester .....	3
Utica .....	4	Greece (6 mile grocery) .....	7
York Mills .....	3	Brockways .....	3
Whitesboro' .....	1	Spencerport .....	2
Oriskany .....	3	Adam's Basin .....	3
Rome .....	8	Cooley's Basin .....	3
New London .....	6	Brockport .....	2
Higginsville .....	4	Holley .....	5
Dunbarton .....	1	Hulburton .....	3
Loomis .....	1	Brockville .....	1
Durhamville .....	3	Hindsburgh .....	1
Lenox .....	3	Albion .....	4
Canastota .....	2	Gaines' Basin .....	2
New Boston Landing .....	4	Eagle Harbor .....	1
Canaseraga Landing .....	1	Knowlesville .....	3
Chittenango .....	1	Medina .....	4
Bolivar .....	1	Shelby's Basin .....	3
Pool's Brook .....	2	Middleport .....	3
Kirkville .....	1	Reynale's Basin .....	4
Manlius .....	3	Mabees .....	1
Limestone Feeder .....	1	Gasport .....	1
Orville Feeder .....	2	Orangeport .....	1
Lodi .....	4	Millards .....	2
Syracuse .....	1	Lockport .....	3
Geddes .....	2	Sulphur Springs, G. Lock .....	5
Bellisle .....	4	Pendleton .....	2
Nine Mile Creek .....	2	Pickardsville .....	5
Camillus .....	1	Martinsville .....	2
Canton .....	5	Tonawanda .....	4
Peru .....	2	Lower Black Rock .....	8
Jordan .....	3	Black Rock .....	1
Cold Spring .....	1	Buffalo .....	3

## 2. CHAMPLAIN CANAL.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Albany.	Whitehall.
ALBANY.....	0	0	73
WEST TROY.....	7	7	66
Junction.....	0	7	66
WATERFORD.....	3	12	61
Mechanicville.....	8	20	53
Stillwater Village.....	4	24	49
Bleecker's Basin.....	2	26	47
Wilbur's Basin.....	2	28	45
Van Deusen's Landing.....	5	33	40
Schuylerville.....	3	36	37
Saratoga Bridge.....	2	38	35
Fort Miller.....	3	41	32
Moses Kill.....	3	44	29
Fort Edward.....	5	49	24
Glens Falls Feeder.....	2	51	22
Baker's Basin.....	1	52	21
Smith's Basin.....	5	57	16
Fort Ann.....	4	61	12
Comstock's Landing.....	4	65	8
WHITEHALL.....	8	73	0

GLENS FALLS FEEDER—(*Champlain Canal*).*Distance from place to place.*

	MILES.
Champlain Canal.....	0
Sandy Hill.....	2
Glens Falls.....	3
Head of the Feeder.....	2
Head of the Pond.....	5

## 3. CAYUGA AND SENECA CANAL.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Montezuma.	Geneva.
MONTEZUMA.....	0	0	21
Seneca River.....	5	5	16
S. Dermon's.....	2	7	14
Seneca Falls.....	3	10	11
Chamberlain's Mills.....	2	12	9
Waterloo.....	2	14	7
Teal's.....	5	19	2
GENEVA.....	2	21	0
Lateral Canal to East Cayuga Village.....	2	.....	.....

## 4. OSWEGO CANAL.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Syracuse.	Oswego.
SYRACUSE .....	0	0	38
SALINA .....	2	2	36
Liverpool .....	3	5	33
Mud Lock .....	2	7	31
Cold Spring .....	1	8	30
New Bridge .....	5	13	25
Three River Point .....	2	15	23
Phoenix .....	2	17	21
Sweet's Lock .....	3	20	18
Ox Creek .....	3	23	15
Fulton .....	4	27	11
Braddock's Rapid .....	4	31	7
Tiffany's Landing .....	4	35	3
High Dam .....	1	36	2
OSWEGO .....	2	38	0

## SENECA RIVER TOWING PATH AND SENECA RIVER IMPROVEMENT.

*Distance from place to place.*

	MILES.
Mud Lock .....	0
Baldwinsville .....	6
ack's Reef .....	12

## 5. CROOKED LAKE CANAL.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Seneca Lake.	Crooked Lake.
DRESDEN .....	0	0	8
Mallory's .....	3	3	5
Andrews & Ways .....	2	5	3
PENN YAN .....	2	7	1
Crooked Lake .....	1	8	0

## 6. CHEMUNG CANAL.

NAMES OF PLACES.	DISTANCE FROM			
	Place to place.	Seneca Lake.	Elmira.	Knoxville.
Seneca Lake...	0	0	23	33
HAVANA .....	4	4	19	29
Millport .....	6	10	13	23
HORSEHEADS .....	7	17	6	16
Elmira .....	6	23	0	22
Knoxville .....	22	33	22	0

FEEDER — (*Chemung Canal*).

NAMES OF PLACES.	DISTANCE FROM			
	Place to place.	Seneca Lake.	Elmira.	Knoxville.
HORSEHEADS .....	0	17	6	19
Miller's Basin.....	7	24	13	9
Dam at head of Feeder.....	7	31	20	2
Knoxville.....	2	33	22	0

## 7. CHENANGO CANAL.

NAMES OF PLACES.	DISTANCE FROM				
	Place to place.	Utica.	Hamilton.	Oxford.	Binghamton.
UTICA .....	0	0	30	60	97
Road leading from New Hartford to Whitesboro' .....	3	3	27	57	94
Clinton .....	6	9	21	51	88
Deanesville .....	5	14	16	46	83
Oriskany Falls .....	5	19	11	41	78
Solsville .....	3	22	8	38	75
Bouckville .....	2	24	6	36	73
Peck's Basin.....	2	26	4	34	71
HAMILTON .....	4	30	0	30	67
Lebanon Factory.....	2	32	2	28	65
Earlsville.....	4	36	6	24	61
Sherburne.....	5	41	11	19	56
North Norwich .....	4	45	15	15	52
Plasterville .....	2	47	17	13	50
Norwich .....	4	51	21	9	46
OXFORD .....	9	60	30	0	37
Hayne's Mill .....	10	70	40	10	27
Greene .....	4	74	44	14	23
Forks.....	8	82	52	22	15
Pond Brook .....	2	84	54	24	13
Port Crane .....	5	89	59	29	8
Crocker's Mills.....	1	90	60	30	7
BINGHAMTON .....	7	97	67	37	0



## 8. BLACK RIVER CANAL.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Rome.	Boonville.
ROME.....	0	0	25
Ridge Mills.....	2	2	23
Lock No. 7.....	3	5	20
Walworth's Store House.....	1	6	19
Delt (on Delta Feeder).....	1	7	18
Westernville.....	2 miles from Walworth's.	9	16
Wells Brook Aqueduct.....	2	11	14
Stringer's Creek Aqueduct.....	1	12	13
Lansing Kill Aqueduct.....	2	14	11
Lock No. 31.....	2	16	9
Lansing Kill Dam or Feeder.....	1	17	8
Lower Falls Lansing Kill.....	2	19	6
Upper Falls Lansing Kill.....	2	21	4
Lock No. 70.....	2	23	2
BOONVILLE.....	2	25	0
Hawkinsville (on Boonville Feeder).....	3	28	3
A. Lee's, ".....	2	30	5
R. B. Miller's, ".....	1	31	6
State Dam, or Forest Port, ".....	4	35	10
Head of reservoir, or Port Woodhull (on Boonville Feeder).....	2	37	12
Sugar River, on Canal.....	3 miles from Boonville.	23	3
Little Falls (Black River, or Hulbert's Mill).....	1	29	4
Port Leyden.....	3	32	7
Lyon's Falls.....	3	35	10

## BLACK RIVER IMPROVEMENT.

NAMES OF PLACES.	DISTANCE FROM		
	Place to place.	Lyon's Falls.	Carthage.
Lyon's Falls.....	0	0	42
Turin Landing.....	2	2	40
Fish Creek Landing.....	2	4	38
Carter's Landing.....	2	6	36
House Creek.....	2	8	34
Tiffney's Landing.....	1	9	33
Otter Creek.....	2	11	31
Independence Creek.....	4	15	27
Long Reach, or Bush Landing.....	2	17	25
Beach Landing.....	3	20	22
Smith's Landing.....	5	25	17
Illingworth Landing.....	1	26	16
Beaver River.....	6	32	10
Stoney Creek, or Blodget's Landing.....	4	36	6
Deer River.....	1	37	5
Carthage.....	5	42	0

## 9. GENESEE VALLEY CANAL.

NAMES OF PLACES.	Distance from place to place.	DISTANCE FROM								
		Rochester.	Scottsville.	Mount Morris.	Nunda.	Portageville.	Oramel.	Cuba.	Olean.	Dansville.
Rochester .....	0	0	12	37	51	59	78	93	107	52
Rapids (Lock No. 1).....	2	2	10	35	49	57	76	91	105	50
Tone's Basin .....	2	8	4	29	43	51	70	85	99	44
Scottsville .....	4	12	0	25	39	47	66	81	95	40
Canawaugus (Avon Road) .....	2	20	8	17	31	39	58	73	87	32
Sackett's Basin.....	2	22	10	15	29	37	56	71	85	30
Fowlerville Road .....	2	24	12	13	27	35	54	69	83	28
Barclay's Mill .....	2	26	14	11	25	33	52	67	81	26
Piffardinia .....	3	29	17	8	22	30	49	64	78	23
Spencer's Basin .....	1	30	15	7	21	29	48	63	77	22
Tracy's Basin.....	2	32	20	5	19	27	46	61	75	20
Cuylerville .....	1	33	21	4	18	26	45	60	74	19
Leicester, Moscow Landing .....	1	34	22	3	17	25	44	59	73	18
Genesee River Dam.....	2	36	24	1	15	23	42	57	71	16
Mount Morris .....	1	37	25	0	14	22	41	56	70	15
Shaker Settlement.....	4	41	29	4	10	18	37	52	66	11
Brushville .....	5	46	34	9	5	13	32	47	61	16
Nunda .....	5	51	39	14	0	8	27	42	56	21
Messenger's Hollow .....	2	53	41	16	2	6	25	40	54	23
Genesee Falls (Tunnel section)...	4	57	45	20	6	2	21	36	50	27
Portageville .....	2	59	47	22	8	0	19	34	48	29
Lock No. 61.....	5	64	52	27	13	5	14	29	43	34
Mixville Landing, Wiscoy Feeder,	1	65	53	28	14	6	13	28	42	35
Fillmore.....	4	69	57	32	18	10	9	24	38	39
Burrville.....	6	75	63	38	24	16	3	18	32	45
Caneadea Centre .....	1	76	64	39	25	17	2	17	31	46
Oramel .....	2	78	66	41	27	19	0	15	29	48
Belfast .....	2	80	68	43	29	21	2	13	27	50
Rockville.....	3	83	71	46	32	24	5	10	24	53
Caseville.....	1	84	72	47	33	25	6	9	23	54
Black Creek Corners.....	4	88	76	51	37	29	10	5	19	58
Cuba .....	5	93	81	56	42	34	15	0	14	63
Ischua Feeder.....	6	99	87	62	48	40	21	6	8	69
Hinsdale.....	1	104	88	63	49	41	22	7	7	70
Olean .....	7	107	95	70	56	48	29	14	0	77
Western .....	3	110	98	73	59	51	32	17	3	80
Portville .....	2	112	100	75	61	53	34	19	5	82
Oswayne Creek .....	1	113	101	76	62	54	35	20	6	83
Millgrove .....	1	114	102	77	63	55	36	21	7	84
DANSVILLE BRANCH.										
Shaker Settlement.....	0	41	26	4	10	18	37	52	66	11
Fitzhugh's Basin.....	2	43	31	6	12	20	39	54	68	9
Kyserville .....	1	44	32	7	13	21	40	55	69	8
Rock Spring.....	2	46	34	9	15	23	42	57	71	6
Sherwood's Landing.....	1	47	35	10	16	24	43	58	72	5
Steam Saw Mill .....	1	48	36	11	17	25	44	59	73	4
McNair's Landing.....	1	49	37	12	18	26	45	60	74	3
Woodville .....	1	50	38	13	19	27	46	61	75	2
Comminsville .....	1	51	39	14	20	28	47	62	76	1
Dansville .....	1	52	40	15	21	29	48	63	77	0

## 10. ONEIDA LAKE CANAL AND FEEDER.

Extends from the Erie Canal at "Higgins," four miles west of New London, to the Oneida Lake, as follows:

Canal proper, from Higgins to Wood Creek..... 3½ miles.  
 Wood Creek, with a towing-path to the Oneida Lake.. 2¼ miles.

## ONEIDA RIVER IMPROVEMENT.

*Distance from place to place.*

	MILES.
Three River Point .....	0
Peter Scott Creek.....	4
Oak Orchard .....	4
Caughanoy .....	7
Brewerton... ..	5
	<hr/>
	20
	<hr/>



# FORM OF CONTRACT

FOR

## NEW WORK AND EXTRAORDINARY REPAIRS,

IN USE IN 1873.

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BOARD OF CANAL COMMISSIONERS.

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*Contract for Public Work on the New York State Canals.*

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Mr. \_\_\_\_\_ contractor with the people of the State  
of New York for the construction of \_\_\_\_\_ on the \_\_\_\_\_ canal.  
Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
Work to be completed on or before the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .

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NEW YORK STATE CANALS, 1873.

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GENERAL CONTRACT FOR \_\_\_\_\_

CANAL.

Articles of agreement, made and concluded the \_\_\_\_\_ day of \_\_\_\_\_,  
in the year eighteen hundred and \_\_\_\_\_, between \_\_\_\_\_ of the  
of \_\_\_\_\_, county of \_\_\_\_\_, of the first part, and the people of the  
State of New York, of the second part; whereby it is covenanted and  
agreed as follows:

The said \_\_\_\_\_, party of the first part, hereby covenants and agrees to furnish all materials, which shall be of a sound and good quality, and perform all the labor necessary to construct and to finish, in every respect, in the most substantial and workmanlike manner,

as the same is or may be located for the \_\_\_\_\_ canal \_\_\_\_\_.

The construction of the aforesaid work shall be, in all respects, according to the specifications hereunto annexed, which are to be considered as part of this contract.

And it is further agreed, that, if at any time any overseer or workman employed by the party of the first part shall be declared to be unfaithful or incompetent by the resident engineer or canal commissioner having charge of said work on that part of the canal embraced in this contract, the said party of the first part, on notice of such declaration, shall forthwith dismiss such person, and shall no longer employ him on any part of the work.

No public or private road that crosses or intersects the line of said canal, or work, shall be obstructed by excavation or otherwise, until directions shall be given by said engineer to commence and complete the canal or work across said road or highway; nor shall any crops of grain, grass or vegetables, nor any dwelling-house or other building on said line be disturbed, unless by direction of said engineer.

And it is further agreed, by the said party of the first part, that the work hereby contracted to be done, as far as may be required by the said engineer, shall be carried on so as to facilitate and not to incommode the prosecution of contracts for adjoining or contiguous work.

And it is further agreed that this contract, in every respect, shall progress in such order, and at such places in the work, and at such times and seasons as the canal commissioners, or either of them, or the resident engineer may direct; and particular reference shall at all times be had to the navigation of said canal, and the safety of its bank and structures, and the work conducted in such a manner as not to disturb or interfere with the navigation, use and safety of the same; and all precautionary measures that may be deemed necessary by said canal commissioners, or either of them, or said engineer, to guard the said navigation and said canal against the danger of interruption or injury by the prosecution of this contract, shall be carried into effect by the said party of the first part at his own cost and expense.

And it is hereby further mutually agreed, that the said party of the first part will perform the work embraced in this contract, and also that the canal commissioner in charge will pay, out of the moneys appropriated therefor, in full compensation for the same, the following

sums at the following rates ; provided always, that the total amount paid by said commissioner to said party of the first part, shall not exceed, in the aggregate, the estimated amount of the aforesaid work, including the expense for engineering.

For side chopping, grubbing and clearing, the sum of                      dollars.

For removing ice and snow, and for pumping, bailing and draining, including the expense of constructing and removing coffer dams, excavating ditches, and all other items of cost caused by pumping, bailing and draining, the sum of                      dollars.

For all earth excavations, whether of clay, loam, sand, gravel, pure, mixed or combined, including soft or rotten rock, which, in the opinion of the resident engineer, can be plowed, and stone measuring less than half a cubic yard, and for the removal of all slope wall, vertical wall and docking, at the rate of                      cents per cubic yard.

For excavation of all rock, which, in the opinion of the resident engineer, cannot be excavated without blasting as cheaply as with blasting, at the rate of                      dollars and                      cents per cubic yard.

For excavation of rock, which, in the opinion of the resident engineer, can be excavated without blasting as cheaply as with blasting, at the rate of                      cents per cubic yard.

For excavation of old masonry, at the rate of                      dollars and                      cents per cubic yard.

For embankment, as provided in specifications, at the rate of                      cents per cubic yard.

For lining, as provided in specifications, at the rate of                      cents per cubic yard.

For puddling earth, as provided in specifications, at the rate of                      cents per cubic yard.

For procuring and puddling in gravel between foundation timbers, and at sheet-piling, at the rate of                      cents per cubic yard.

For slope wall and pavement, at the rate of                      dollars and                      cents per cubic yard.

For loose stone, at the rate of                      cents per cubic yard.

For loose stone and gravel, intermixed with brush, at the rate of                      cents per cubic yard.

For vertical or battered rubble walls, laid in hydraulic mortar, at the rate of                      dollars and                      cents per cubic yard.

For vertical or battered rubble walls, laid dry,                      dollars and                      cents per cubic yard.

For masonry in abutments, piers, wings, spandrels and parapets, laid in hydraulic mortar, at the rate of                      dollars and                      cents per cubic yard.

For masonry in abutments, piers, wings, spandrels and parapets, laid dry, at the rate of                      dollars and                      cents per cubic yard.

For masonry in arches, laid in hydraulic mortar, including centers, and removing the same, at the rate                      dollars and                      cents per cubic yard.

For masonry in arches, laid dry, including centers, and removing the same, at the rate of                      dollars and                      cents per cubic yard.

For coping, at the rate of                      dollars and                      cents per cubic yard.

For concrete masonry, at the rate of                      dollars and                      cents per cubic yard.

For white oak timber, boards, plank and scantling, at the rate of                      dollars and                      cents per M. feet, B. M.

For white pine timber, boards, plank and scantling, at the rate of                      dollars and                      cents per M. feet, B. M.

For red beech or white elm timber, boards, planks or scantling, at the rate of                      dollars and                      cents per M. feet, B. M.

For hemlock or spruce timber, boards, plank or scantling, at the rate of                      dollars and                      cents per M. feet, B. M.

For white cedar or chestnut, at the rate of                      dollars and                      cents per M. feet, B. M.

For bearing piles, delivered as per bill, at the rate of                      cents per lineal foot.

For driving bearing piles, measured in the work, at the rate of                      cents per lineal foot.

For wrought-iron work, at the rate of                      cents per pound.

For cast-iron work, at the rate of                      cents per pound.

For spikes and nails, at the rate of                      cents per pound.

For zinc, at the rate of                      cents per pound.

For sulphur and sand cement,                      dollars per each structure.

For painting and sanding, at the rate of                      cents per square yard.

For constructing road, at the rate of                      dollars and                      cents per rod.

The prices above specified are to be in full compensation for all materials and labor required to put the same into the work herein contracted for, and complete the whole work in all respects, including the expense of furnishing all the materials, and performing all the work according to the plans, specifications, and notices exhibited at the letting of said work, which said notice and the papers hereto annexed, as far as applicable, form a part of this contract.

And the said party of the first part hereby further agrees to perform all the work contracted for, as specified in this contract, but any alteration in the form, dimensions, location or manner of doing work ordered by the canal commissioner and division engineer, in accordance with section 9 of chapter 377, of Laws of 1850, or of subsequent enactments relating to public work, shall be made as directed, and when the



several quantities of work, or any of them, from this or any other cause that may enhance the cost of the work, shall be increased beyond the amount or amounts exhibited at the time of letting this contract, such increase shall be paid for at the rates herein provided for the same class of work; and whenever the several quantities of work, or any of them, shall, in any respect, from this or any other cause, be diminished below the amount or amounts exhibited at the time of letting this contract, the party of the first part hereby agrees to perform the remaining work at the prices stipulated in this contract, and to make no claim for damages in consequence of such increase or diminution.

And, it is also hereby further mutually agreed, that the aforesaid party of the first part shall receive and use in the work herein contracted for, such timber, stone, iron and other materials as shall be furnished by the State, and that all materials found in the mechanical structures, or in the slope wall, vertical wall and docking of the old canal, within the limit of this contract, shall be considered the property of the State, and the party of the first part shall carefully select and preserve them, and when directed by the engineer in charge, shall use the same in the construction of the work, and shall allow for all of said materials furnished or found, such sum or sums as the division and resident engineers shall deem equitable, and the value thereof shall be deducted from the total amount of work done; and when materials other than above mentioned, are found in the excavation, or in places from which earth for embankment is obtained, the party of the first part shall be allowed to use, without charge therefor, all such materials as the engineer in charge may approve of and deem necessary and proper in the construction of the work; but any surplus materials shall be considered the property of the State, and shall be deposited as directed by said engineer.

And, it is hereby further agreed, that fifteen per cent of the amount of work done, or materials furnished under this contract, at the contract price thereof, shall be reserved by the canal commissioners until the whole work, which is the subject of contract, shall be fully and entirely completed.

And, it is further agreed, that within twenty days from the expiration of each month in which the work herein contracted for shall have been prosecuted according to the terms and conditions of this contract, the aforesaid commissioner will pay therefor such sums, as shall not, together with former payments, exceed the amount actually due under this contract, according to the estimate of the engineer, except the sum due on the final account; but, if, at any time after such payments

have been made, either of the canal commissioners, or any of the engineers employed on the work, shall discover that any of the work included in the estimates, on which such payments have been made, has been performed in an unworkmanlike manner, or contrary to the said specifications, the canal commissioner or resident engineer shall direct the party of the first part to take down, and rebuild such work in the manner required by the said specifications, and no further payments on this contract shall be made until the said party of the first part shall comply with such directions.

Provided, however, and it is expressly covenanted and agreed, on the part of the said party of the first part, that the work hereby specified and embraced in this contract shall be commenced and properly prosecuted at the times and in the manner directed by the resident engineer or canal commissioner in charge, and that the said work shall be performed and completed on or before the            day of            , in the year one thousand eight hundred and            .

And it is further mutually understood and agreed, that, in case the execution of this contract shall be suspended by the party of the second part at any time, or for any cause, no claim for prospective profits on work not done shall be made or allowed; but the party of the first part shall have the right to complete the work when the party of the second part shall order it to be resumed.

And it is further agreed, that if, in the opinion of the resident engineer, the said party of the first part shall refuse or neglect to commence, or properly execute the work embraced in this contract, or shall violate any of its provisions, or perform the work in an improper manner, the said engineer may certify the same in writing to the board of canal commissioners, and in such case the said board, or a majority of them, shall have power, by resolution to be entered on their minutes, to certify and declare that this contract has been violated and abandoned by the said party of the first part; and, on the making of such certificate, the said contract shall be deemed violated and abandoned, and the sum of money, bonds or stocks required by the commissioners as security for the entering into said contract, together with such other additional securities as they may have required, and then hold as security for the completion of the work under this contract, shall be forfeited to the State, and paid into the treasury and become a part of the canal fund.

And it is hereby further understood and agreed between the parties to this contract, that in case of delays arising in the progress of the work, either from neglect or inability on the part of the said party of the first part, which may, in the opinion of the canal commissioner in charge,

retard the opening of the canal, or in any way embarrass or interfere with its navigation, said canal commissioners, or any one of them, may direct the resident engineer to employ a sufficient force, and purchase the necessary materials to complete the work, or such portion of it as may be necessary to secure navigation, according to the specifications hereunto annexed; and all expenses incurred in the performance of such work shall be paid for by the said canal commissioners, on the affidavit of the engineer, and the amount shall be charged to the account of the aforesaid party of the first part.

And the said party of the first part further promises and agrees not to give, or sell, or allow to be given or sold, by any agent or agents in his or in their employ, any ardent spirits to the workmen or any other persons, on or near the line of said canal, or allow any to be brought on the work by the laborers or any other persons.

And the said party of the first part hereby further promises and agrees to perform the several stipulations of this contract by the said party of the first part and workmen under said party's immediate superintendence, and not by a sub-contract or sub-contractor.

And it is hereby further mutually agreed, that the resident engineer, for the time being in the employ of the State, on the work herein contracted for, shall in all cases determine the amount or quantity of the several kinds of work which are to be paid for under this contract, and the amount of compensation to be paid therefor, which compensation shall not exceed the prices agreed upon for the items of work herein specified, or a just and reasonable price for necessary extra work done, directed and ordered pursuant to law, and not otherwise provided for, and shall, within ninety days after the work shall in all respects have been completed according to the terms and conditions of this contract, present a final account and estimate of the same to the division engineer of the division of the State canals upon which said work is located, who shall review, and, when satisfactory, approve and deliver the same to the canal commissioner.

And it is further agreed, that in case of any misunderstanding or disagreement between the resident engineer and the said party of the first part, or with the canal commissioner in charge, in regard to making up the final account of work on said contract, the said account shall be referred by either of the said parties to the State engineer and surveyor and said division engineer, who shall examine the same, and decide whether it is made up according to the strict terms of the specification and contract, and at just and reasonable amounts and prices for all materials that may have been furnished by the State, and for all necessary extra work that shall have been ordered and



red lines drawn across the canal in such a direction as to bisect the angles formed by the two contiguous portions of the red or base line, as it is termed, upon the towing-path. The intermediate offsets are described at right angles to, and the distance upon both given from the base line in links. The latter are represented by red dotted lines, and the distances to them upon the base line reckoned, in each case, from the last preceding station. The same is likewise done with the other distances upon the base line; those to the bridges being taken to the lines joining the nearest angles or corner-posts of their abutments; those to the locks extending to the lines passing through the center of the two nearest quoin posts, and those to the aqueducts, to the faces of their abutments.

“The space inclosed by the blue lines represents the portion embraced within the limits of the survey, as belonging to the State, and the names of the adjoining proprietors given as they stood at the time of executing the survey. The distances are projected upon a scale of two chains to the inch.

“Where the red cross lines extending from the red base line toward any stream, either have no figures denoting their length, or have a cross (x) annexed to the figures, the canal extends to and into the stream. Where any stream or pond is on the same level with the waters of the canal, and the navigation is conducted in such stream or pond, the stream or pond is included in the canal to the high-water mark of the stream, with a berme on each side of fifteen links, where no towing-path is designated on the map.

“The spoil-banks belonging to the State, of earth, gravel and stone, taken from the canal and its banks in constructing them, are not designated on the map.

“The houses, shops, barns and other erections within the blue lines, except those constructed by the State, are encroachments on the canal.

“Streams, channels and ditches leading from waste-weirs, waste gates, culverts and aqueducts, though not included within blue lines, have been appropriated as drains to such waste-weirs, gates, culverts, and aqueducts. The lengths of the offsets and other cross lines are to be taken to the extent the figures indicate. In some cases the beds of rivers and streams were excavated and improved for the purpose of the free and safe discharge of water under aqueducts and culverts, and for the purpose of guarding against damage by ice floods and floating materials, and for the purpose of giving a direction to the stream above and below aqueducts and culverts.

“In many such cases, public works, of the description mentioned, are not included within the blue lines indicating the boundary of the canal.

“In these, and all other cases of a similar nature, the State claims, beyond the blue lines, so far as will enable it, in all cases, to repair, maintain and defend its works; claiming, as of right, in all places, not only that which may strictly be considered the canal, but every thing fairly connected with its safety, beneficial use and enjoyment.”

The foregoing EXPLANATORY REMARKS have been prepared as a part of this book containing volume number \_\_\_\_\_, of the map of the \_\_\_\_\_ canal, previous to the time of \_\_\_\_\_ submitting the MAP and FIELD NOTES of the said \_\_\_\_\_ canal to the canal board for its approbation.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_, 183 \_\_\_\_\_.

Signed, etc.,

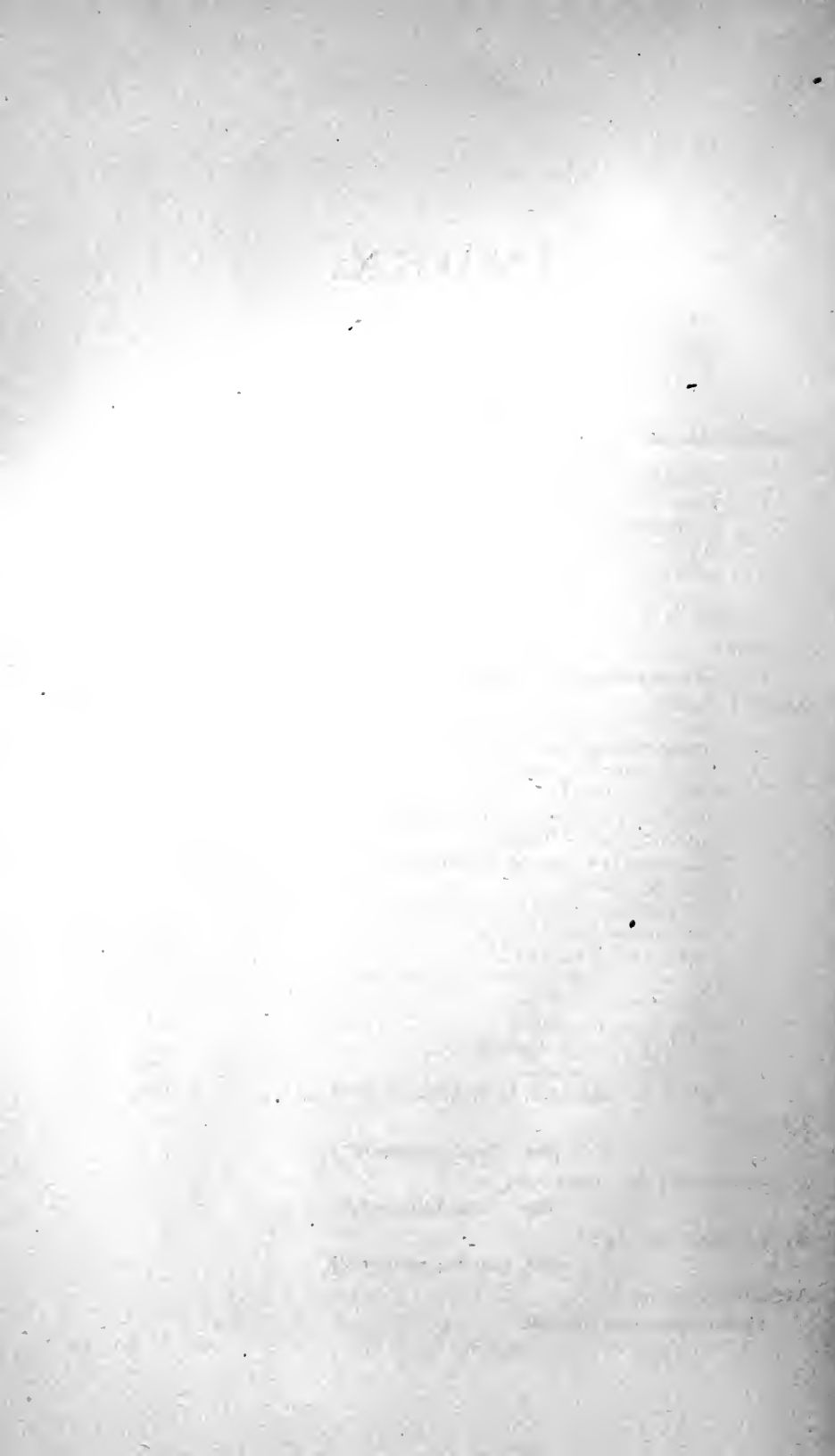
*Canal Commissioners.*

STATE OF NEW YORK, }  
CANAL DEPARTMENT. }

I HEREBY CERTIFY that the foregoing printed statements of the "*regulations relative to the weighing and inspecting of boats and their cargoes ;*" "*relative to tolls on passengers ;*" "*relative to the navigation of the canals ;*" the "*authority to canal officers to sue for penalties ;*" "*miscellaneous regulations ;*" and of the "*Rates of Toll*" to be collected on the canals of this state, are true copies from the original minutes of the Canal Board.

IN WITNESS WHEREOF, I have hereunto set my hand and  
seal of office, this            day            , 18 .

*Auditor.*





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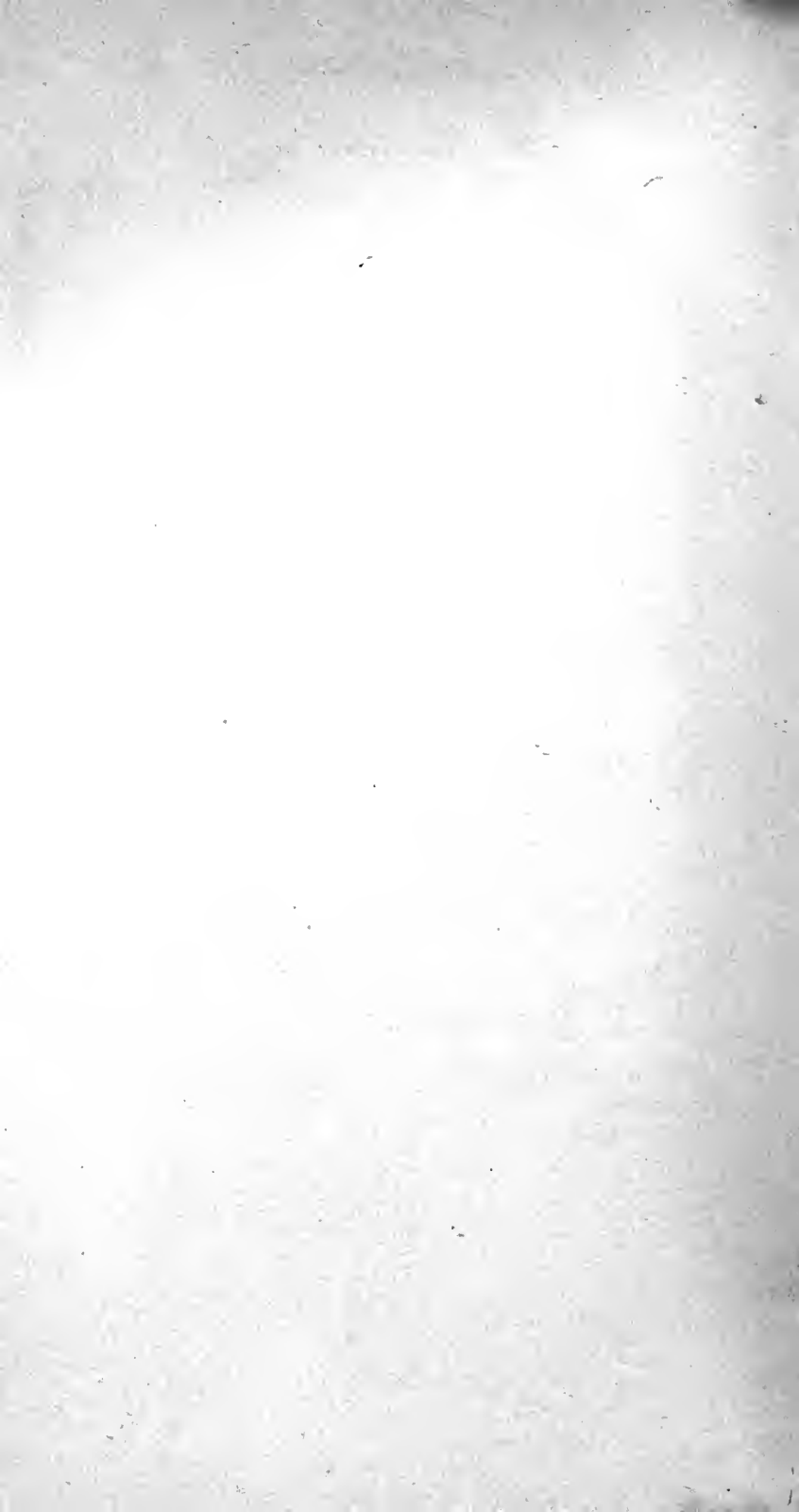
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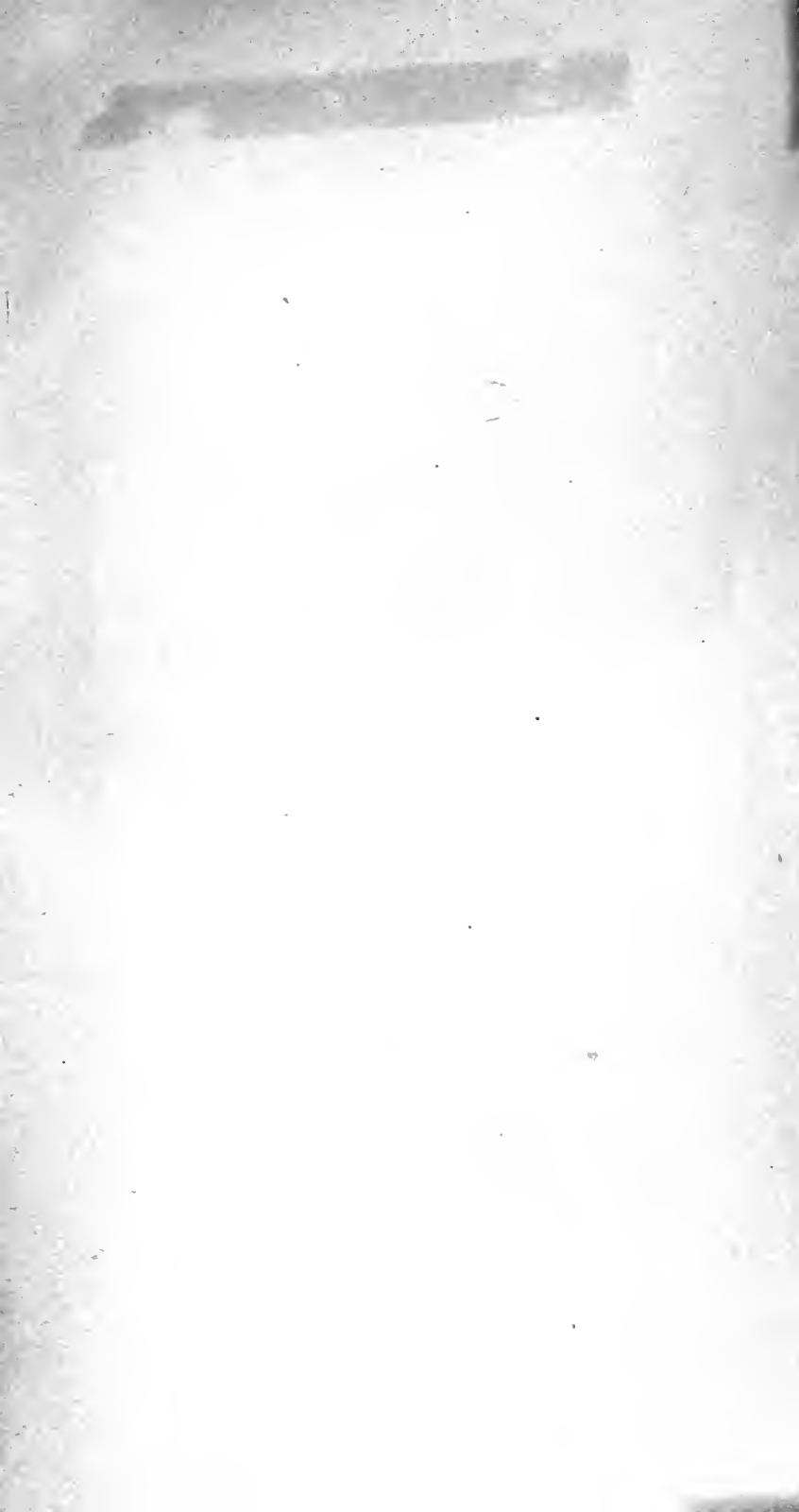
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